

Exhibit 160, part 3

In the Matter Of:

TERESA LEAVITT/FONG and WONG vs JOHNSON & JOHNSON, et al.,

JAMES MITTENTHAL (PMQ/COR)

October 18, 2018

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

---O0O---

TERESA ELIZABETH LEAVITT
and DEAN J. MCELROY,
Plaintiffs,

vs.

JOHNSON & JOHNSON, et
al.,

No. RG17882401

Defendants.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

---O0O---

PUI FONG and THAI WONG,
Plaintiff,

vs.

JOHNSON & JOHNSON, et al.,

JCCP CASE NO. 4674

No. BC675449

Defendants.

TRIAL PRESERVATION
VIDEOTAPED DEPOSITION OF JAMES PETER MITTENTHAL
(PMQ/COR Johnson & Johnson; Johnson & Johnson
Consumer, Inc.)

VOLUME II, Pages 219 - 443

Taken before EARLY K. LANGLEY, B.A., RMR, RSA, CLR
CSR No. 3537

October 18, 2018

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			Page 220				Page 222
1	I N D E X			1	DEPOSITION OF JAMES PETER MITTENTHAL		
2				2			
3				3	BE IT REMEMBERED, that pursuant to Notice, and		
4	JAMES PETER MITTENTHAL		225	4	on October 18, 2018, commencing at the hour of 9:05		
5	DIRECT EXAMINATION BY MR. SWANSON (Cont'd)		225	5	a.m., in the offices of Kazan, McClain, Satterley &		
6				6	Greenwood, 55 Harrison Street, Suite 400, Oakland,		
7				7	California 94607, before me, EARLY LANGLEY, a Certified		
8				8	Shorthand Reporter, State of California, personally		
9	E X H I B I T S			9	appeared JAMES PETER MITTENTHAL, produced as a witness		
10	EXHIBIT NO.		PAGE	10	in said action, and being previously duly sworn, was		
11	Exhibit 20	Spreadsheet, "Additional	232	11	thereupon examined as a witness in said cause.		
12		Investigation Regarding Scope of		12	---		
13		Searches Conducted Mid-2018 for		13	APPEARANCES:		
14		Category 3 and 4 Methods"		14			
15	Exhibit 21	Spreadsheet re history of Johnson	242	15	For the Plaintiffs:		
16		& Johnson holds, consumer talc		16	MARK SWANSON		
17	Exhibit 22	"Mittenthal -- Leavitt/Fong	246	17	Kazan, McClain, Satterley & Greenwood		
18		Deposition Topics"		18	55 Harrison Street, Suite 400		
19	Exhibit 23	WWRIM Policy, Version 4.0,	247	19	Oakland, California 94607		
20		12/31/2014		20	(510) 302-1000		
21	Exhibit 24	WWRIM Standard RIMS-1, Version	247	21	Mswanson@kazanlaw.com		
22		5.0, 12/31/2016		22			
23	Exhibit 25	WWRIM Policy 1.0, 7/31/2009	248	23	For the Defendants Imerys Talc America, Inc.; Cyprus		
24	Exhibit 26	Mr. Mittenthal's notes for Hayes	260	24	Mines Corporation; Imerys Talc Vermont, Inc.;		
25	Exhibit 27	WWRIM Policy Version 1.1,	289	25	Specially appearing for Defendant Imerys USA, Inc.:		
		9/30/2009					
	Exhibit 28	WWRIM Policy, Version 2.0,	289		ERIN CARPENTER		
		1/31/2011			Dentons US LLP		
	Exhibit 29	WWRIM Policy, Version 3.0,	289		4675 MacArthur Court, Suite 1250		
		12/31/2013			Newport Beach, California 92660		
					(213) 623-9300		
					erin.carpenter@dentons.com		
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1	Exhibit 30	Records Retention Schedule	311	1	For the Defendants Johnson & Johnson; Johnson & Johnson		
2	Exhibit 31	Document entitled "People	381	2	Consumer, Inc.:		
3		Interviewed in Talc Fact Finding"		3	CHRISTOPHER COX		
4	Exhibit 32	Document preservation notice,	416	4	RICHARD T. BERNARDO (Via phone)		
5	Exhibit 33	Document preservation notice,	425	5	Skadden Arps, Slate, Meagher & Flom, LLP		
6		12/15/2009, Deane Berg v JJCP		6	4 Times Square		
7	Exhibit 34	Legal hold notice, Chesteen v	429	7	New York, New York 10036		
8	Exhibit 35	JJCC, 2/6/2014	430	8	(212) 735-3453		
9		Revised Legal Hold Notice,		9	christopher.cox@skadden.com		
10	Exhibit 36	5/14/2014, Estrada v JJ and JJCC	430	10	richard.bernardo@skadden.com		
11		Legal Hold Notice, 7/19/2014,		11	Also present:		
12	Exhibit 37	State of Mississippi v J&J and	431	12	Jonathan Jaffe		
13		JJCP		13	ESI Consultant		
14		Talc Ovarian Cancer PL		14	Jim Partridge		
15		Litigation, Updated Legal Hold		15	Tele-Video Production Services		
16		Notice		16			
17				17			
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<p>1 --oOo--</p> <p>2 P R O C E E D I N G S</p> <p>3 --oOo--</p> <p>4 THE VIDEOGRAPHER: We're on the record.</p> <p>5 My name is Jim Partridge. I'm a qualified video</p> <p>6 technician video recording on behalf of Tele-Video</p> <p>7 Production Services.</p> <p>8 The court reporter today is Early Langley</p> <p>9 of Aiken Welch Reporters.</p> <p>10 Today's date is October 18, 2018. The</p> <p>11 time is now 9:05 a.m. The location of this</p> <p>12 deposition is the Kazan and McClain law firm in</p> <p>13 Oakland, California.</p> <p>14 Today's witness is James Mittenthal. This</p> <p>15 is Volume Number II in the case of Leavitt and</p> <p>16 McElroy, et al. v. Johnson & Johnson and Fong, et</p> <p>17 al. v. Imerys Talc America, Inc.</p> <p>18 This is Case Number RGI7882401 filed in</p> <p>19 the Superior Court of California in and for the</p> <p>20 County of Alameda.</p> <p>21 This deposition was noticed by the Kazan</p> <p>22 law firm for the plaintiff.</p> <p>23 Would the counsel for the parties please</p> <p>24 identify themselves and for whom they are</p> <p>25 appearing.</p>	<p>1 oath?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Okay. What work have you done in</p> <p>4 connection with the Fong and/or Leavitt cases</p> <p>5 since I deposed you on September 21st in the first</p> <p>6 volume?</p> <p>7 A. So I gathered additional materials,</p> <p>8 retention schedules. I conducted follow-on</p> <p>9 interviews with Pamela Downs and Laura Giacino,</p> <p>10 and a woman named Tina French was also present for</p> <p>11 that other interview for the purpose of</p> <p>12 understanding additional information about Fong</p> <p>13 and Leavitt collection activities.</p> <p>14 Q. Okay.</p> <p>15 A. I obtained -- requested and obtained a</p> <p>16 list of legal holds that encompassed consumer talc</p> <p>17 and I made a list of those holds.</p> <p>18 Q. From whom did you --</p> <p>19 MR. SWANSON: Before I ask the question,</p> <p>20 Early could you read that entire answer back to me</p> <p>21 please.</p> <p>22 (Record read by the court reporter.)</p> <p>23 BY MR. SWANSON:</p> <p>24 Q. Okay. And those retention schedules that</p> <p>25 you gathered, did you actually do the search for</p>
Page 225	Page 227
<p>1 MR. SWANSON: Mark Swanson appearing on</p> <p>2 behalf of the plaintiffs.</p> <p>3 MR. CARPENTER: Good morning, sir. Erin</p> <p>4 Carpenter appearing on behalf of Imerys Talc</p> <p>5 America, Inc.; Imerys Talc Vermont; and Cyprus</p> <p>6 Mines Corporation.</p> <p>7 MR. COX: Christopher Cox on behalf of</p> <p>8 defendants Johnson & Johnson and Johnson & Johnson</p> <p>9 Consumer, Inc.</p> <p>10 THE VIDEOGRAPHER: And on the telephone,</p> <p>11 please.</p> <p>12 MR. BERNARDO: Richard Bernardo, also</p> <p>13 counsel for the Johnson & Johnson defendants.</p> <p>14 JAMES PETER MITTENTHAL</p> <p>15 previously sworn as a witness,</p> <p>16 testified as follows:</p> <p>17 THE VIDEOGRAPHER: Would the counsel</p> <p>18 please state any stipulations or statements they</p> <p>19 would like on the record.</p> <p>20 None.</p> <p>21 Counsel, you may proceed.</p> <p>22 DIRECT EXAMINATION BY MR. SWANSON (Cont'd):</p> <p>23 Q. Good morning, Mr. Mittenthal.</p> <p>24 A. Good morning.</p> <p>25 Q. You understand that you're still under</p>	<p>1 those and obtain those or did you get those from</p> <p>2 counsel?</p> <p>3 A. I got those from counsel.</p> <p>4 Q. Okay. And those holds are for what period</p> <p>5 of time?</p> <p>6 A. The holds cover -- the earliest hold that</p> <p>7 I received was dated 1999.</p> <p>8 Q. And these were additional holds that had</p> <p>9 not previously been produced to the plaintiffs; is</p> <p>10 that correct?</p> <p>11 A. These were holds that were related to, to</p> <p>12 my understanding, issues other than mesothelioma.</p> <p>13 Q. Now, these legal holds that you're talking</p> <p>14 about -- well, let me -- let me -- because I think</p> <p>15 I got myself confused or maybe you confused me.</p> <p>16 The additional materials that you gathered were</p> <p>17 retention policies; right?</p> <p>18 A. I -- I gathered -- that was one of the</p> <p>19 things I got, yes, were additional retention</p> <p>20 schedules.</p> <p>21 Q. And you gathered those -- you got those</p> <p>22 from counsel; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And why did you get those?</p> <p>25 A. I was -- in an effort to respond to issues</p>

<p style="text-align: right;">Page 228</p> <p>1 raised in the last time to provide the most 2 thorough coverage of the retention schedules 3 during the applicable times, I sought to get 4 what -- the retention schedules that were 5 available.</p> <p>6 Q. So those were retention schedules that 7 hadn't been produced to the plaintiffs in Fong and 8 Leavitt up to that point; is that correct?</p> <p>9 MR. COX: Object to form.</p> <p>10 THE WITNESS: Some of them had not been 11 produced yet.</p> <p>12 BY MR. SWANSON:</p> <p>13 Q. Have they all been produced now?</p> <p>14 MR. COX: Object to form.</p> <p>15 THE WITNESS: That's -- that's my 16 understanding.</p> <p>17 BY MR. SWANSON:</p> <p>18 Q. And what period -- can you give me the 19 period of time that those holds cover?</p> <p>20 A. I'm sorry?</p> <p>21 Q. The range of years for those retention -- 22 did I say "holds"?</p> <p>23 A. Yes, sir.</p> <p>24 Q. I apologize. I'm getting myself confused. 25 For those retention schedules that you</p>	<p style="text-align: right;">Page 230</p> <p>1 original binder going back to 1997.</p> <p>2 Does that refresh your memory about what 3 you've seen recently or did you see additional 4 retention schedules going back to '97 that either 5 weren't produced in this 2004 to 2012 range that 6 was subsequently produced and wasn't produced in 7 the initial production?</p> <p>8 A. The former. That refreshes my memory.</p> <p>9 Q. So you spoke to Pamela Downs, Tina French, 10 and Laura Giacino?</p> <p>11 A. That's correct.</p> <p>12 Q. All in the same place?</p> <p>13 A. There was a conversation with Ms. Downs 14 and then there was a second conversation with 15 Ms. Giacino and Ms. French.</p> <p>16 Q. Remind us again. Pam Downs, she -- Pamela 17 Downs she worked for Triality; is that right?</p> <p>18 A. That's right.</p> <p>19 Q. And where did that interview take place?</p> <p>20 A. That was -- that was at Skadden offices.</p> <p>21 Q. And what day did that take place?</p> <p>22 A. I'd have to double-check. It was -- it 23 was last week.</p> <p>24 Q. How long did it last?</p> <p>25 A. A couple of hours.</p>
<p style="text-align: right;">Page 229</p> <p>1 obtained from counsel after your first volume of 2 your deposition that you say have been produced, 3 what's the range of years they cover?</p> <p>4 A. They went back to the 1997.</p> <p>5 Q. And did you bring those with you today?</p> <p>6 A. I believe they're all -- I'm not sure 7 what's in this binder. I believe that everything 8 has been brought today.</p> <p>9 Q. Okay. For your information, the binder 10 contains the exhibits to the first volume of your 11 deposition. So that if I have a question for -- 12 and that was the binder that you brought to that 13 deposition.</p> <p>14 Do you remember that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So if I have questions about a 17 prior exhibit, then you can refer to what's in the 18 binder, okay?</p> <p>19 A. Okay.</p> <p>20 Q. All right. So what was produced 21 subsequent to the first volume of your deposition 22 to us were additional retention schedules for the 23 period 2004 through 2012. Now, we did have a 24 prior retention schedule that had previously been 25 introduced and was marked for the record in your</p>	<p style="text-align: right;">Page 231</p> <p>1 Q. Who else was there?</p> <p>2 A. Chris Cox.</p> <p>3 Q. And what additional information specific 4 to either what we spoke about in Volume I of your 5 deposition or that's related to these two cases, 6 Leavitt and Fong, did you discuss with Pam Downs?</p> <p>7 A. I wanted to clarify and understand the 8 extent of the -- her -- her involvement in 9 specific searches related to Fong and Leavitt 10 beyond what had been captured in my original notes 11 from her.</p> <p>12 Q. And what did she tell you with respect to 13 that?</p> <p>14 A. Well, basically I -- I created -- as we 15 were talking, I created a Word table on my 16 computer and that table contained six or seven 17 columns, and as we spoke, I filled out the -- the 18 table, and that table is with me today.</p> <p>19 Q. Okay. Do you have a copy of that table 20 for me?</p> <p>21 MR. COX: I do.</p> <p>22 MR. SWANSON: Okay. And do you have a 23 copy I can mark or his copy -- oh, his copy I can 24 mark.</p> <p>25 Mr. Mittenenthal, can I mark your -- put an</p>

<p style="text-align: right;">Page 232</p> <p>1 exhibit tag on your copy?</p> <p>2 THE WITNESS: Sure.</p> <p>3 MR. SWANSON: Okay.</p> <p>4 (Whereupon, Plaintiff's Exhibit 20 was</p> <p>5 marked for identification.)</p> <p>6 BY MR. SWANSON:</p> <p>7 Q. And how many pages -- this is four pages.</p> <p>8 So the Word doc -- the Word table that you</p> <p>9 created with respect to Pam Downs that's marked as</p> <p>10 Exhibit 20, that's a four-page document, and we'll</p> <p>11 just have to make sure to keep these separate from</p> <p>12 these others.</p> <p>13 Is that okay if I separate these?</p> <p>14 A. Sure.</p> <p>15 Q. Okay. There you go. And I'll hand those</p> <p>16 back to you.</p> <p>17 And it looks like you also included in</p> <p>18 this information that you've gathered from Laura</p> <p>19 Giacino; correct?</p> <p>20 A. Yes. I took the same document and I</p> <p>21 continued it.</p> <p>22 Q. And so does this document summarize what</p> <p>23 you learned from both of them regarding searches</p> <p>24 specific to Leavitt and Fong?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 234</p> <p>1 Generally, Ms. Giacino led the call.</p> <p>2 Q. Can you explain to me by giving me an</p> <p>3 example how this table works that you created?</p> <p>4 A. Well, the -- it was initially to be tied,</p> <p>5 and I worked with counsel to get the -- in terms</p> <p>6 of those, the specific case, Leavitt or Fong, and</p> <p>7 the request so that I could tie the searches back</p> <p>8 to a specific request for production.</p> <p>9 The -- the next element is a -- is a --</p> <p>10 simply a category, and the -- this table, for the</p> <p>11 sake of convenience, the post- -- the later</p> <p>12 searches specific to Leavitt and Fong materials,</p> <p>13 and those -- and the requests for production. But</p> <p>14 the later searches were categorized for the -- for</p> <p>15 the sake of understanding the circumstances for</p> <p>16 each.</p> <p>17 This table speaks to what -- denoted as</p> <p>18 Category 3 and 4, which, as per the legend, are</p> <p>19 additional searches of company sources and</p> <p>20 first-time searches of company sources.</p> <p>21 The other two categories that relate to</p> <p>22 the additional collection efforts, Category 1</p> <p>23 target searches of the global production and</p> <p>24 refiltering of the previously collected unproduced</p> <p>25 material, did not involve additional on-the-ground</p>
<p style="text-align: right;">Page 233</p> <p>1 Q. How long did you speak to Laura Giacino?</p> <p>2 A. It was about an hour and a half, as I</p> <p>3 recall.</p> <p>4 Q. And who else was there during that</p> <p>5 conversation?</p> <p>6 A. That was a telephone call. Tina French</p> <p>7 was present with Ms. Giacino.</p> <p>8 Q. And who is Tina French?</p> <p>9 A. She is an assistant corporate secretary.</p> <p>10 Q. Did you speak to them while -- let's start</p> <p>11 with Pamela Downs.</p> <p>12 Did you speak to her about anything other</p> <p>13 than just what specific searches had been done</p> <p>14 related to Leavitt and Fong?</p> <p>15 A. That's my recollection, yes.</p> <p>16 Q. And is that the same with Laura Giacino?</p> <p>17 A. Yes.</p> <p>18 Q. Was there any information that Tina French</p> <p>19 provided?</p> <p>20 A. I mean, there were -- there were times</p> <p>21 when they were both talking. It was -- it was</p> <p>22 really an interview with Ms. Giacino. It was</p> <p>23 announced that Ms. French was also on the phone</p> <p>24 and she occasionally piped in with information.</p> <p>25 It was not always clear which one was talking.</p>	<p style="text-align: right;">Page 235</p> <p>1 document-gathering. So they -- only the</p> <p>2 on-the-ground collection activities were included</p> <p>3 in this table.</p> <p>4 Q. Okay. And I see there's a column here for</p> <p>5 "people consulted."</p> <p>6 What does that refer to?</p> <p>7 A. So I -- in my conversations with</p> <p>8 Ms. Downs, I said, who did you go to, to identify</p> <p>9 this -- sources of this additional information,</p> <p>10 where it might be, what might be obtainable, and</p> <p>11 so the people consulted would be the people who</p> <p>12 would be -- either have a custodial relationship</p> <p>13 to the data or knowledge of where it might be.</p> <p>14 Q. And then "areas searched," that is</p> <p>15 physically what they were actually searching?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know, from your notes or from your</p> <p>18 memory if we went through, who did the actual</p> <p>19 searches?</p> <p>20 A. I -- I don't. I understand that the</p> <p>21 people consulted were involved. I don't know who</p> <p>22 physically did the hands-on searches. Or, in the</p> <p>23 case of the computer systems, I guess I would call</p> <p>24 those hands-on as well. But the actual searches.</p> <p>25 It was certainly under attorney supervision.</p>

<p style="text-align: right;">Page 236</p> <p>1 Q. And then you've got another column, 2 "search criteria"; correct?</p> <p>3 A. Yes.</p> <p>4 Q. So just looking at this second one under 5 "industrial hygiene" for Leavitt. It's Request 6 Number 46 and Request for Production Set Number 3, 7 it says here the search criteria is "knowledge of 8 file names and key words for talc and asbestos."</p> <p>9 So what do they actually look -- first of 10 all, let me see if I can get an idea of what 11 happened in that search. What was -- whoever 12 did -- do we know who did the search, the actual 13 search here?</p> <p>14 A. I don't know who performed the search 15 except to say that it was based on the knowledge 16 of Vivian Pai and Reed Holbrook.</p> <p>17 Q. And it says, "Looked for missing 18 information from earlier archive searches, 19 departmental share."</p> <p>20 So what were they actually searching? Was 21 this a database search that they are's doing? Are 22 they doing a search of physical archives? What's 23 actually being searched?</p> <p>24 A. I would understand that they looked in 25 both the -- the ERMS archive as well as the</p>	<p style="text-align: right;">Page 238</p> <p>1 and Mr. Holbrook, they looked for certain -- they 2 scanned the list of file names in the departmental 3 share and looked for files that they knew would be 4 named accordingly.</p> <p>5 The key words I took to mean terms that 6 were applied to the searches of the ERMS.</p> <p>7 MR. SWANSON: Madam Court Reporter, can 8 you read that back, please.</p> <p>9 (Record read by the court reporter.)</p> <p>10 BY MR. SWANSON:</p> <p>11 Q. I don't understand. They're looking for 12 file names where?</p> <p>13 A. In the share drive. So, for instance, it 14 may be denoted as the L drive or the whatever 15 drive letter is associated with an area on the 16 company's computer network where they -- everyone 17 can contribute and deposit files, Microsoft office 18 files, other files that are at the departmental or 19 work group level.</p> <p>20 Q. So this is -- which company are we talking 21 about here? The share files?</p> <p>22 A. My understanding would be corporate --</p> <p>23 Q. Go ahead.</p> <p>24 A. Well, Ms. -- Ms. Pay -- Pai would have 25 been in the corporate area, so she would have</p>
<p style="text-align: right;">Page 237</p> <p>1 network share drive.</p> <p>2 Q. Now, on some of these others, you actually 3 did put EMRS (sic) here and you didn't put that 4 here, so I'm curious. Are you guessing when you 5 say they looked at ERMS?</p> <p>6 A. Well, when Ms. Downs used the word 7 "archive searches," that's what I interpreted her 8 to be referring to.</p> <p>9 Q. Okay. And that's what we discussed at 10 length in Volume I was the ERMS searches that -- 11 it's kind of an indexing system; correct?</p> <p>12 A. For files in off-site --</p> <p>13 MR. COX: Object to form.</p> <p>14 THE WITNESS: Sorry.</p> <p>15 MR. COX: Go ahead.</p> <p>16 THE WITNESS: Files in off-site storage 17 and in certain cases files that are on -- in 18 company facilities.</p> <p>19 BY MR. SWANSON:</p> <p>20 Q. It says, "Knowledge of file names and key 21 words for talc and asbestos."</p> <p>22 That's the search criteria. What does 23 that mean?</p> <p>24 A. I understood that to mean that, with 25 respect to the file shares, that between Ms. Pai</p>	<p style="text-align: right;">Page 239</p> <p>1 consulted a corporate share.</p> <p>2 Q. Okay. So when you say "corporate share," 3 you mean Johnson & Johnson proper?</p> <p>4 A. That's my understanding.</p> <p>5 Q. Are you guessing or that's what you --</p> <p>6 A. Well, the notation for her title was WW. 7 So "Worldwide" would -- I believe, and I -- that's 8 what I took "WW" to denote.</p> <p>9 I did not follow up and determine her 10 corporate affiliation. I see that I 11 wrote "corporate," so I -- by all indicia, she is 12 part of the corporate organization as opposed to 13 consumer. I did not independently reference 14 her -- you know, look her up in the directory or 15 anything like that.</p> <p>16 Q. And how far back is the information 17 that's -- or documents and information there on 18 their share drives, do you know?</p> <p>19 A. My understanding is that the -- the 20 information in share drives is generally 21 persistent. It is not -- it is not subject to 22 disposition. There may be -- they may have the 23 ability to perform retention on it, but I -- my 24 understanding is that that material is -- just 25 stays on the share drive.</p>

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1 Q. And what's the original source of those
2 materials?

3 A. Oh, those would be documents that authors
4 had placed there or people who had received them
5 had placed there. So it is -- you know, because
6 it's a share drive, it does not necessarily tell
7 us how something got there. It -- we may be able
8 to look at meta data and see who put it there
9 originally, but there's not really a story that's
10 told in the -- in the file share as to how
11 something got there. Therefore, I believe
12 Ms. Downs relied on these people's memory to
13 understand where to look in the share drive that
14 would be for the relevant information.

15 Q. So are these share drives like small
16 companies have where a bunch of information just
17 gets dumped in shared files -- in a shared drive?

18 MR. COX: Object to the form.

19 THE WITNESS: Well, I -- I understand that
20 at Johnson & Johnson -- and I've heard that the
21 term "L drive" being referred to denote areas
22 where there is a shared directory.

23 Now, that might be different for, let's
24 say, marketing versus R&D, but, generally
25 speaking, the company makes share drives available

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1 to users to place information on, and that's
2 determined by the department as to how people use
3 it.

4 Q. Is there -- is there some kind of standard
5 operating procedure about what gets put there and
6 what gets retained there and what gets removed and
7 who removes it?

8 MR. COX: Object to the form.

9 THE WITNESS: Well, to my understanding,
10 the company's retention policies do not speak to
11 what I call "containers" or "vehicles."

12 So, in other words, the L drive, the share
13 drive, would be simply a place to store
14 information. The -- the policies or retention
15 schedules relate to the purpose, the use of the
16 document, the fact that it may be classified
17 according to a retention schedule based on its --
18 its content and purpose. That's what would
19 determine how it's treated as opposed to whether
20 it's on a share drive or some other location.

21 BY MR. SWANSON:

22 Q. I'm sure I'll have questions about that
23 later.

24 So you gathered a list of holds; correct?

25 A. Yes, I did.

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1 Q. Okay. And can you -- do you have multiple
2 copies of that?

3 MR. SWANSON: So let's mark that as -- let
4 me mark yours -- as Exhibit 21 to your deposition.
5 (Whereupon, Plaintiff's Exhibit 21 was
6 marked for identification.)

7 BY MR. SWANSON:

8 Q. When did you compile the list of holds?

9 A. Last week.

10 Q. Okay. And I know some of these were
11 produced to us previously and some were produced
12 subsequently to the plaintiffs in these cases. I
13 have seen these.

14 Is this a complete list of all of the
15 Johnson & Johnson holds with respect to talc
16 litigation?

17 MR. COX: Object to the form.

18 THE WITNESS: I requested holds relating
19 to consumer -- consumer talc.

20 BY MR. SWANSON:

21 Q. And is this the complete list of
22 historical holds related to consumer talc?

23 MR. COX: Object to the form of the
24 question.

25 THE WITNESS: This is my understanding of

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1 what was -- what was found to satisfy my request.

2 BY MR. SWANSON:

3 Q. What specifically was your request?

4 A. For holds relating to consumer talc.

5 Q. And is the spokesperson for Johnson &
6 Johnson, then, this -- you have no information of
7 any prior legal holds related to consumer talc,
8 consumer talc litigation; correct?

9 MR. COX: Object to the form.

10 THE WITNESS: That's correct.

11 BY MR. SWANSON:

12 Q. Did you interview anybody about legal
13 holds or did you ask -- just ask counsel for
14 whatever legal holds they had?

15 A. I spoke with counsel.

16 Q. And by the way, in between the two
17 depositions, how much time have you spent speaking
18 to Johnson & Johnson's counsel?

19 A. I was on site probably five or six times,
20 either working by myself or working with counsel.
21 Probably -- with counsel, perhaps 15 to 20 hours.

22 Q. And you say "on site," you mean at the
23 Skadden law firm offices?

24 A. Yes.

25 Q. Is there anything that you spoke to Pamela

<p style="text-align: right;">Page 244</p> <p>1 Downs or Laura Giacino related to Johnson & 2 Johnson that is not summarily reflected in your 3 notes? 4 MR. COX: Object to the form. 5 Go ahead. 6 THE WITNESS: Of course, my prior 7 conversations with Ms. Downs are in my other 8 notes. But in terms of the current time period, 9 it's all in here. 10 BY MR. SWANSON: 11 Q. Were any searches done or inquiries done 12 to -- were any inquiries or searches done to 13 locate responsive documents, other than you 14 requesting holds and retention schedules, 15 responsive documents to the plaintiff's requests 16 in the Leavitt and Fong cases subsequent to your 17 first volume of your deposition? 18 MR. COX: Object to the form. 19 THE WITNESS: I -- if I understand your 20 question correctly, I don't have complete 21 knowledge of that. I know that additional 22 materials have been provided to plaintiffs, 23 additional retention schedules of company 24 policies. I updated -- some of my materials that 25 I worked on with counsel that were updated had</p>	<p style="text-align: right;">Page 246</p> <p>1 So let's mark this as Exhibit 22 to your 2 deposition. If you give me your copy, let me mark 3 that. 4 THE WITNESS, oh sure. 5 (Whereupon, Plaintiff's Exhibit 22 was 6 marked for identification.) 7 BY MR. SWANSON: 8 Q. What is Exhibit Number 22? 9 A. This was an updated version of a document 10 that I worked on with counsel, and it's basically 11 simply a list of the noticed deposition topics 12 that I received, coupled with some of the produced 13 materials that correspond to them. 14 Q. And this is an update of a document you 15 previously produced; is that right? 16 A. Yes. 17 Q. And I believe we previously attached that, 18 but I'll sort that out later. 19 Did you -- are there any other reports or 20 writings or notes that you made subsequent to 21 September 24th regarding this deposition in the 22 Leavitt and Fong cases? 23 A. No. 24 Q. I've just been provided today worldwide's 25 records and information management policies, so</p>
<p style="text-align: right;">Page 245</p> <p>1 been provided. 2 I don't know about searches. 3 Q. Okay. So, other than the additional 4 retention schedules and the worldwide records and 5 information policy being produced and the 6 additional holds, you're not aware of any other 7 searches being done since September 24th; correct? 8 A. Well, I wouldn't -- I wouldn't be aware. 9 I mean, I'm not privy to that -- to that in terms 10 of the ongoing communications between plaintiff 11 and defendants. 12 Q. I understand. But your role here is to 13 talk about searches that were done, and I'm just 14 simply asking, since September 24th, are you aware 15 of any other searches being done other than for 16 the items that we just mentioned with respect to 17 holds, retention policies and... 18 A. I see. No. I'm only aware of that, that 19 which has been listed in the sheet. 20 Q. And I believe that -- you just mentioned 21 that you've updated some notes specific to these 22 cases; is that correct? 23 A. Yes. 24 MR. SWANSON: Do you have a copy of that, 25 Chris? Thank you.</p>	<p style="text-align: right;">Page 247</p> <p>1 I'm not going to get into the particulars of 2 the -- all the prior ones, but I do want to go 3 over some basics on those based on the ones that 4 I've actually had an opportunity to review up 5 until now. 6 MR. COX: Mark, I'll just note for the 7 record that the revision history of the documents 8 that you're referring to are actually referenced 9 in the copies you've had for a while now. 10 MR. SWANSON: Oh, okay. 11 BY MR. SWANSON: 12 Q. And we may go over the other ones later or 13 we may just jump to them now if we need to. But 14 I'm going to hand you two of them, which is 15 Version 4. 16 MR. SWANSON: And that's Exhibit 23. 17 (Whereupon, Plaintiff's Exhibit 23 was 18 marked for identification.) 19 MR. SWANSON: And Version 5, which will 20 be -- whoops, that's my copy with my notes on 21 it -- Version 5 of Johnson & Johnson's worldwide 22 records and information management -- records and 23 information management program standard will be 24 Exhibit 24 to your deposition. 25 (Whereupon, Plaintiff's Exhibit 24 was</p>

<p style="text-align: right;">Page 248</p> <p>1 marked for identification.)</p> <p>2 BY MR. SWANSON:</p> <p>3 Q. Do you have those in front of you?</p> <p>4 A. I do.</p> <p>5 Q. Okay. So, yeah, there's some language at</p> <p>6 the beginning of this. If you look at Exhibit 23,</p> <p>7 do you see what it says the policy is at the top?</p> <p>8 A. Yes, I do.</p> <p>9 Q. And can you read that out loud?</p> <p>10 A. "Records and information shall be created,</p> <p>11 valued, protected, managed, and disposed in</p> <p>12 accordance with applicable laws, regulations, and</p> <p>13 the requirements of the worldwide records and</p> <p>14 information management policy and standards and</p> <p>15 other applicable Johnson & Johnson policies."</p> <p>16 Q. This is Version 4 of this, but you've seen</p> <p>17 prior policies; correct?</p> <p>18 A. In the past I have, yes.</p> <p>19 Q. And the initial policy, Version 1, that</p> <p>20 goes back to 2009; correct?</p> <p>21 A. I don't recall.</p> <p>22 MR. SWANSON: Can I mark yours and then</p> <p>23 print another one? I apologize.</p> <p>24 (Whereupon, Plaintiff's Exhibit 25 was</p> <p>25 marked for identification.)</p>	<p style="text-align: right;">Page 250</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. And this policy, if you look back at</p> <p>3 Number 23, Exhibit 23, the policy that is</p> <p>4 described there at the top of creating, valuing,</p> <p>5 protecting, managing, disposing in accordance with</p> <p>6 applicable laws, you know, records and</p> <p>7 information, that -- does that accurately describe</p> <p>8 the policy?</p> <p>9 MR. COX: Object to the form.</p> <p>10 THE WITNESS: I -- I believe it describes</p> <p>11 this version of the policy. This is the language</p> <p>12 of the policy. I don't understand. This is</p> <p>13 the -- the language from the policy is, I believe,</p> <p>14 what you were referring to, and that is -- that is</p> <p>15 the preamble to the policy.</p> <p>16 BY MR. SWANSON:</p> <p>17 Q. Okay. So let me ask you this: Is it --</p> <p>18 since 2009 part of Johnson & Johnson's record and</p> <p>19 information management policy to create, value,</p> <p>20 protect, manage, and dispose of information and</p> <p>21 records in accordance with applicable laws,</p> <p>22 regulations, and requirements of that policy?</p> <p>23 MR. COX: Object to the form.</p> <p>24 THE WITNESS: Well, yes, I've seen it in</p> <p>25 that language in the Version 1.0, and I believe</p>
<p style="text-align: right;">Page 249</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. I'm just going to go ahead and hand you</p> <p>3 what's marked as Exhibit Number 25. You have that</p> <p>4 in front of you. And that indicates that the</p> <p>5 Version 1 of 1.0 of Johnson & Johnson's worldwide</p> <p>6 records and information management policy was</p> <p>7 created or -- the date of this policy is July 31,</p> <p>8 2009; correct?</p> <p>9 A. Yes.</p> <p>10 Q. So their -- Johnson & Johnson's worldwide</p> <p>11 records and information management policy only</p> <p>12 goes back to 2009; correct?</p> <p>13 A. This particular policy document, yes, was</p> <p>14 created in 2009.</p> <p>15 Q. Well, this is Version 1.0; correct?</p> <p>16 A. Yes.</p> <p>17 Q. There's no prior version to that, is</p> <p>18 there?</p> <p>19 A. I'm not aware of a worldwide prior</p> <p>20 version.</p> <p>21 Q. So this was the first worldwide standard</p> <p>22 for records and information management policy at</p> <p>23 Johnson & Johnson; correct?</p> <p>24 MR. COX: Object to the form.</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 251</p> <p>1 you're referring to the 4.0 version. I see it</p> <p>2 there as well.</p> <p>3 BY MR. SWANSON:</p> <p>4 Q. Okay. And is that still Johnson &</p> <p>5 Johnson's philosophy that a record -- their</p> <p>6 worldwide records and information management</p> <p>7 policy has to do with managing and disposing of</p> <p>8 records and information in accordance with various</p> <p>9 laws, regulations, and legal requirements?</p> <p>10 A. Is it still the policy today?</p> <p>11 Q. Yes.</p> <p>12 A. My understanding is that it is -- it is</p> <p>13 still the policy today. There is a new category</p> <p>14 of -- of management of information which is</p> <p>15 archive, and that archive may be encompassed in</p> <p>16 the phrase "disposition." In the later versions</p> <p>17 of the program standard, the archive option was</p> <p>18 made more explicit.</p> <p>19 Q. So we have Version 5 here. Is that the</p> <p>20 most recent version?</p> <p>21 And that's Exhibit -- what did we mark</p> <p>22 that as? 24?</p> <p>23 A. 24.</p> <p>24 Q. Is that -- is this the most recent</p> <p>25 version, Exhibit 24?</p>

<p style="text-align: right;">Page 252</p> <p>1 A. I'd want to check my notes to confirm 2 that. 3 Q. Now, if you look at Exhibit 24 -- 23, if 4 you look at the second page of this, you see 5 under "provisions"? 6 A. I'm sorry, did you say "24" or "23"? 7 Q. 23. 8 A. Yes. I'm there. 9 Q. Okay. And here -- it says here, "Records 10 and information shall be retained in accordance 11 with the Johnson & Johnson enterprise retention 12 schedule in accordance with applicable legal 13 holds. When a record or information retention 14 requirement is reached, it shall be disposed of in 15 accordance with this policy and associated WWRAM 16 (sic) standards and in compliance with operating 17 company procedure." 18 Do you see that? 19 A. Yes. 20 Q. So the idea of having this management 21 policy is that it -- it's addressing how to 22 preserve and dispose of documents and the two 23 tools that are being used in conjunction to make 24 those determination are retention schedules and 25 legal holds; correct?</p>	<p style="text-align: right;">Page 254</p> <p>1 BY MR. SWANSON: 2 Q. Sure. Of course. That's what a policy 3 is. But if you've got a policy and you don't 4 comply with it, then it's not an effective policy; 5 correct? 6 A. Except -- yes, I would agree except to the 7 extent that policies don't necessarily in 8 themselves contain a mechanism to comply. You 9 need procedures to comply. 10 So the policy expresses what the 11 procedures should accomplish. 12 Q. Right. So there have to be procedures to 13 accomplish it, there has to be understanding by 14 employees; correct? 15 A. Yes. 16 Q. And that includes training of employees; 17 correct? 18 A. Yes. 19 Q. And whatever policies and mechanisms there 20 are need to be -- the employees who have records 21 or information need to know about those; correct? 22 A. Yes. 23 Q. So, for example, if there's a legal hold 24 and people don't know about a legal hold that -- 25 that's theoretically applicable to documents or</p>
<p style="text-align: right;">Page 253</p> <p>1 A. Yes. 2 Q. And that's still the policy; correct? 3 A. To my understanding, yes. 4 Q. And so -- and it says there, when -- when 5 a retention requirement is reached, a record 6 information "shall be disposed of." Right? In 7 accordance with the policies. 8 So when you reach a retention schedule, 9 the limit of how long something has to be held, if 10 there's no legal hold in place, it gets disposed 11 of typically; correct? That's the idea of this 12 policy; true? 13 A. Yes. 14 MR. COX: Object to the form and 15 mischaracterizes the document. 16 BY MR. SWANSON: 17 Q. Would you agree -- does Johnson & Johnson 18 agree that for a records retention policy to be 19 effective it has to be complied with? 20 True? 21 MR. COX: Object to the form. 22 THE WITNESS: The -- the company creates 23 policies that are -- that express its -- its 24 intentions and procedures under them that enable 25 employees to comply with those policies.</p>	<p style="text-align: right;">Page 255</p> <p>1 information they have, then it's -- it has no 2 effect; correct? 3 MR. COX: Object to the form. 4 THE WITNESS: No effect in and of itself. 5 I mean, certainly there are other reasons why 6 people retain information such as retention 7 schedules. 8 BY MR. SWANSON: 9 Q. But if there wasn't a retention schedule, 10 they wouldn't be -- I mean, if there was -- if it 11 wasn't under a retention policy, then it wouldn't 12 be retained. Then -- and they didn't know about a 13 legal hold, then there would be no reason for them 14 to preserve that document; correct? 15 MR. COX: Object to the form. 16 THE WITNESS: There would be no business 17 reason for them to preserve them. 18 BY MR. SWANSON: 19 Q. They might preserve it sort of by accident 20 or by the fact of just not -- not getting around 21 to it, something like that. But otherwise they 22 would dispose of it; true? 23 MR. COX: Object to the form. 24 THE WITNESS: From the standpoint of the 25 policy documents, I would agree.</p>

<p style="text-align: right;">Page 256</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. You're aware that the plaintiffs demanded</p> <p>3 all retention schedules from Johnson & Johnson,</p> <p>4 correct, in this case?</p> <p>5 A. I'm generally aware of that.</p> <p>6 Q. And you're aware that it has been</p> <p>7 represented to the plaintiffs in this case that</p> <p>8 all of those policies have been produced; correct?</p> <p>9 MR. COX: Object to the form.</p> <p>10 THE WITNESS: I'm aware that those</p> <p>11 policies that could be located have been provided</p> <p>12 have been produced.</p> <p>13 BY MR. SWANSON:</p> <p>14 Q. And the oldest policy that you've seen is</p> <p>15 1997; correct?</p> <p>16 A. That is the oldest retention schedule I've</p> <p>17 seen at the Consumer level.</p> <p>18 Q. And what do you mean "at the Consumer</p> <p>19 level"?</p> <p>20 A. Well, the Johnson & Johnson Consumer, Inc.</p> <p>21 or Consumer Products are, as it's been known over</p> <p>22 the different names over the years, has, since the</p> <p>23 early '90s, created its own retention schedules.</p> <p>24 MR. SWANSON: Can I have that answer read</p> <p>25 back, please.</p>	<p style="text-align: right;">Page 258</p> <p>1 '90s that was based on the McNeil Company's</p> <p>2 schedule.</p> <p>3 BY MR. SWANSON:</p> <p>4 Q. And where is that policy?</p> <p>5 A. I have requested and through counsel have</p> <p>6 requested what policies and schedules could be</p> <p>7 provided by the consumer companies. What's been</p> <p>8 provided thus far is what they were able to come</p> <p>9 up with. I understand that they continue to</p> <p>10 research the availability of additional materials.</p> <p>11 Q. Okay. And you realize that -- so I'll</p> <p>12 just cut to the chase here. You've seen the 1997</p> <p>13 records retention schedule; correct?</p> <p>14 A. Yes.</p> <p>15 Q. So in 1997 in the records retention</p> <p>16 schedule, Johnson & Johnson has a retention</p> <p>17 schedule or retention period for records retention</p> <p>18 schedules; correct?</p> <p>19 MR. COX: Object to the form.</p> <p>20 Go ahead.</p> <p>21 THE WITNESS: I'm sorry. When you say</p> <p>22 "Johnson & Johnson," which entity are you</p> <p>23 referring to?</p> <p>24 BY MR. SWANSON:</p> <p>25 Q. It says "Johnson & Johnson Consumer</p>
<p style="text-align: right;">Page 257</p> <p>1 (Record read by the court reporter.)</p> <p>2 BY MR. SWANSON:</p> <p>3 Q. Okay. So Johnson & Johnson -- you're</p> <p>4 talking about the Johnson & Johnson Consumer</p> <p>5 company that was the -- the subsidiary of Johnson</p> <p>6 & Johnson that was specifically tasked with</p> <p>7 marketing and distributing and manufacturing</p> <p>8 Johnson's Baby Powder and Shower to Shower;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And there's a history of companies that</p> <p>12 goes back to Johnson & Johnson Consumer Companies,</p> <p>13 Inc.; Johnson & Johnson Consumer Products, Inc.;</p> <p>14 Johnson's -- different-named companies; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And you're telling me that those companies</p> <p>17 had retention policies going back to the early</p> <p>18 '90s?</p> <p>19 MR. COX: Object to the form.</p> <p>20 THE WITNESS: I'm -- in my fact-finding, I</p> <p>21 interviewed Rosina Bruno-Sheerin who was one of</p> <p>22 the company's records managers. She and -- and</p> <p>23 others, too, perhaps Michelle Anderson, others</p> <p>24 that I spoke to, indicated that there were --</p> <p>25 there was at least a schedule created in the early</p>	<p style="text-align: right;">Page 259</p> <p>1 Products Companies." It was the -- you had</p> <p>2 mentioned that the earliest one that you've seen</p> <p>3 is 1997; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And I have that here, and you have that.</p> <p>6 And, in fact, that has been marked as Exhibit 13.</p> <p>7 If you want to go ahead and pull that out.</p> <p>8 A. Yes, I have it.</p> <p>9 Q. If you look at page, I believe it's 251,</p> <p>10 of Exhibit 13, which is the 1997 retention</p> <p>11 schedule for Johnson & Johnson Consumer Products</p> <p>12 Company.</p> <p>13 And what does it say there about how long</p> <p>14 records retention schedules documentations are</p> <p>15 supposed to be maintained by the company?</p> <p>16 A. Life of corporation.</p> <p>17 Q. Okay. So if any records retention</p> <p>18 schedules that Johnson & Johnson had were</p> <p>19 destroyed or were lost or not preserved, disposed</p> <p>20 of, whatever you want to call it, they weren't</p> <p>21 following their own records retention policy, were</p> <p>22 they?</p> <p>23 MR. COX: Object to the form.</p> <p>24 THE WITNESS: I mean, in response to that</p> <p>25 hypothetical, I would agree.</p>

<p style="text-align: right;">Page 260</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. And Johnson & Johnson's Consumer Products</p> <p>3 Companies, those are the folks who are making and</p> <p>4 marketing and distributing the baby powder;</p> <p>5 correct?</p> <p>6 A. That's my understanding.</p> <p>7 Q. So let's go to the notes. If you look</p> <p>8 at -- if you kind of peel under the rest of those</p> <p>9 exhibits, you find -- you can put that '97</p> <p>10 schedule aside for now. I don't want to bog you</p> <p>11 down with too many things, but if you look at</p> <p>12 Exhibit 18, those are your notes. And those are</p> <p>13 the notes that you created, I believe, in</p> <p>14 preparation for your deposition in June in the</p> <p>15 Hayes case; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And we attached those as Exhibit 18. We</p> <p>18 talked about this at some length.</p> <p>19 MR. SWANSON: What I'd like to do is give</p> <p>20 you another copy of those that we can work off of</p> <p>21 more easily.</p> <p>22 (Whereupon, Plaintiff's Exhibit 26 was</p> <p>23 marked for identification.)</p> <p>24 MR. SWANSON: I'm handing you Exhibit 26</p> <p>25 to your deposition. And let me explain what that</p>	<p style="text-align: right;">Page 262</p> <p>1 maintenance of document platforms, and that sort</p> <p>2 of stuff; right?</p> <p>3 A. I would agree except that I would say, and</p> <p>4 I didn't really prepare them from the</p> <p>5 conversations. They are the real-time record of</p> <p>6 what people were saying as I was asking. So I was</p> <p>7 typing as I was talking.</p> <p>8 Q. So these are -- these are the best</p> <p>9 verbatim records that you could take at the time?</p> <p>10 A. Yes.</p> <p>11 Q. And you mentioned a Rosina Bruno-Sheerin,</p> <p>12 I think.</p> <p>13 A. Yes.</p> <p>14 Q. Making a reference to earlier retention</p> <p>15 schedules prior to 1997; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And can you direct that -- direct me to</p> <p>18 that in your interview?</p> <p>19 A. Yeah. First, I'm going to look in</p> <p>20 Exhibit 19, which is just the index of the notes,</p> <p>21 and I see that she's about halfway through. So</p> <p>22 I'm going to...</p> <p>23 So that's page 36.</p> <p>24 Q. Okay. And where in your notes is the</p> <p>25 reference to retention schedules of the Johnson &</p>
<p style="text-align: right;">Page 261</p> <p>1 is.</p> <p>2 And I think I have a copy for you, Chris.</p> <p>3 MR. COX: Thank you.</p> <p>4 BY MR. SWANSON:</p> <p>5 Q. Do you have Exhibit 26 in front of you?</p> <p>6 A. Yes.</p> <p>7 Q. And those are your notes that you prepared</p> <p>8 in preparation for your deposition in the Hayes</p> <p>9 case; correct?</p> <p>10 A. Appear to be, yes.</p> <p>11 Q. And what I've -- you see what I've done</p> <p>12 here, I've had those paginated at the top right?</p> <p>13 A. I see.</p> <p>14 Q. And the reason is, is because I'm going to</p> <p>15 have a number of questions about these and I</p> <p>16 wanted to make it so that we could easily refer</p> <p>17 each other to where we're -- where we're looking,</p> <p>18 where your answer -- where it's related to my</p> <p>19 question.</p> <p>20 And so that's what I've done here.</p> <p>21 And just, again, to summarize, you</p> <p>22 prepared these notes from the conversations that</p> <p>23 you had had with various Johnson & Johnson</p> <p>24 business employees and also the people who are --</p> <p>25 who deal with records retention, searches,</p>	<p style="text-align: right;">Page 263</p> <p>1 Johnson Consumer Companies going back to the early</p> <p>2 '90s?</p> <p>3 A. On the first page, she noted that she came</p> <p>4 to the company, to the -- what she calls the</p> <p>5 "office side" in 1990, and she noted that she</p> <p>6 created a retention schedule and aligned boxes and</p> <p>7 used the McNeil versions as her basis.</p> <p>8 Excuse me.</p> <p>9 Q. Do you know what -- do you know what the</p> <p>10 retention schedule entailed in terms of what</p> <p>11 departments or companies it was for?</p> <p>12 A. Simply what was put there, that there were</p> <p>13 a few -- that there were not a large number of</p> <p>14 boxes at that time. She references some specific</p> <p>15 material such as batch records and R&D. It's not</p> <p>16 clear from her notes what -- you know, what every</p> <p>17 records type would have been at that point,</p> <p>18 although one can conclude that the McNeil</p> <p>19 schedules were already in existence at that point</p> <p>20 and would have -- would have been -- had similar</p> <p>21 content.</p> <p>22 MR. SWANSON: Move to strike based on</p> <p>23 speculation. It's also nonresponsive.</p> <p>24 BY MR. SWANSON:</p> <p>25 Q. So the retention schedule that you</p>

<p style="text-align: right;">Page 264</p> <p>1 created, was that only as to those boxes, those 2 few boxes that are referenced there? And if you 3 don't know, just tell me you don't know.</p> <p>4 A. Yeah, like I said, my recollection is that 5 she's -- she told me and I wrote it down that she 6 based the schedule on the McNeil schedule. So 7 I -- by that, I infer or deduce that it was not 8 just covering the boxes in front of her but was 9 a -- meant to be a representative schedule.</p> <p>10 Q. For what?</p> <p>11 A. For the Fort Washington operation.</p> <p>12 Q. And what was the Fort Washington operation 13 doing at that time? What specifically was their 14 involvement in baby powder?</p> <p>15 MR. COX: Object to the form.</p> <p>16 THE WITNESS: I'm not an expert on the 17 precise locations. I don't know that they -- that 18 side of the business was involved. I believe 19 there was -- there was more activity on the 20 Skillman side related to the baby powder but 21 that eventually the two sides came together.</p> <p>22 BY MR. SWANSON:</p> <p>23 Q. So you don't know whether these -- 24 whatever retention schedule there was that she 25 created -- first of all, we don't have it. You</p>	<p style="text-align: right;">Page 266</p> <p>1 Q. What other references to early '90s 2 schedules are there in your notes?</p> <p>3 Well, first of all, you said she's a 4 person of knowledge; she has more knowledge with 5 you about these issues of course; correct?</p> <p>6 MR. COX: Object to form.</p> <p>7 THE WITNESS: In terms of the specific 8 question about when -- when and how the schedules 9 were creating, she has that knowledge.</p> <p>10 BY MR. SWANSON:</p> <p>11 Q. Or even what the purview of those 12 schedules was in terms of that to which they were 13 applicable; correct?</p> <p>14 A. I would agree.</p> <p>15 Q. And where else in your notes?</p> <p>16 A. I'm just running through the various 17 records notes.</p> <p>18 Yeah. There's one reference in Cindy 19 Aden's notes about talking to Rosina regarding 20 historical schedules. I -- I'm continuing to look 21 for other -- other references.</p> <p>22 Q. Okay. Let's -- we've got a lot to cover, 23 so if you see something later you can mention it 24 and we'll go over it, if there are other 25 references from other people, who had firsthand</p>
<p style="text-align: right;">Page 265</p> <p>1 don't know the particulars of that, although she 2 said it was based on McNeil.</p> <p>3 Have you reviewed the Neil Fort Washington 4 schedule?</p> <p>5 A. No.</p> <p>6 Q. So you don't -- as the representative for 7 Johnson & Johnson, you don't know what was in that 8 retention schedule, do you?</p> <p>9 A. Correct.</p> <p>10 Q. You don't know what the periods of 11 retention were for; correct?</p> <p>12 A. Correct.</p> <p>13 Q. And you don't know whether or not that 14 applied specifically what it applied to other than 15 something at Fort Washington; correct?</p> <p>16 A. Correct.</p> <p>17 Q. So if we wanted more information about 18 this, we would have to speak to Rosina 19 Bruno-Sheerin; correct?</p> <p>20 MR. COX: Object to form.</p> <p>21 THE WITNESS: Well, I've done my best to 22 summarize her recollection. Then there's other 23 references to those schedules in my notes. She is 24 a person with knowledge.</p> <p>25 BY MR. SWANSON:</p>	<p style="text-align: right;">Page 267</p> <p>1 knowledge of those schedules.</p> <p>2 MR. COX: Mark, if you're going to move on 3 to a new topic, could we take a short break? 4 We've been going for about an hour.</p> <p>5 MR. SWANSON: Let me ask one -- one 6 follow-up there.</p> <p>7 BY MR. SWANSON:</p> <p>8 Q. If you look at page 31 of your notes. 9 This is Exhibit 26 again.</p> <p>10 A. "31" you said?</p> <p>11 Q. Yeah. There was -- I'm trying to find it. 12 Looks like this ERMS was launched in 2014; 13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you see where it says, "Now have 16 integrated retention schedule management in ERMS."</p> <p>17 A. Yes.</p> <p>18 Q. Was the -- was the retention schedule of 19 management not integrated prior to 2014 at 20 Johnson & Johnson?</p> <p>21 MR. COX: Object to the form.</p> <p>22 THE WITNESS: Well, I took that to mean 23 that the schedule had to be applied to TRIM to 24 GIFTS to Versatile independently as opposed to 25 being able to practice retention from a single</p>

<p style="text-align: right;">Page 268</p> <p>1 vantage point.</p> <p>2 MR. SWANSON: Chris, did you say you want</p> <p>3 a break?</p> <p>4 MR. COX: Yeah. I figured you were going</p> <p>5 to move on to a different topic.</p> <p>6 MR. SWANSON: Well, yeah. I mean, there's</p> <p>7 a lot to cover, so if you -- if he needs a break,</p> <p>8 you need a break, that's fine.</p> <p>9 MR. COX: Okay. Let's take a short break.</p> <p>10 MR. SWANSON: Let's try to keep our</p> <p>11 breaks --</p> <p>12 THE VIDEOGRAPHER: This marks the end of</p> <p>13 Video Media Number 1 in the deposition of James</p> <p>14 Mittenthal.</p> <p>15 Off the record at 10:13.</p> <p>16 (Recess taken.)</p> <p>17 THE VIDEOGRAPHER: On the record at</p> <p>18 10:34 a.m.</p> <p>19 This marks the start of Media Number 2 in</p> <p>20 the deposition of James Mittenthal.</p> <p>21 Counsel, you may continue.</p> <p>22 BY MR. SWANSON:</p> <p>23 Q. When you spoke to Rosina Bruno-Sheerin</p> <p>24 about earlier schedules that have not been</p> <p>25 produced and Johnson & Johnson hasn't located, did</p>	<p style="text-align: right;">Page 270</p> <p>1 MR. COX: Object to the form.</p> <p>2 THE WITNESS: They describe periods by</p> <p>3 which information in the various categories must</p> <p>4 be held -- held for. So, to the extent that</p> <p>5 they -- that a piece of information is viewed to</p> <p>6 be subject to a retention schedule, then it is</p> <p>7 required that that information be held at least as</p> <p>8 long as that retention schedule prescribes.</p> <p>9 BY MR. SWANSON:</p> <p>10 Q. So that's a "shall" as opposed to a "may";</p> <p>11 correct? Something that's mandatory that</p> <p>12 employees are required to follow; is that true?</p> <p>13 A. I would agree.</p> <p>14 Q. And since what year have the retention</p> <p>15 schedules for Johnson & Johnson been mandatory?</p> <p>16 A. Well, I don't know. Johnson & Johnson</p> <p>17 is -- is -- which Johnson & Johnson entity would</p> <p>18 that refer to?</p> <p>19 Q. Let's talk about the consumer companies</p> <p>20 who are marketing and manufacturing, selling</p> <p>21 Johnson & Johnson talc -- cosmetic talc products.</p> <p>22 A. Okay. I would refer to my notes with</p> <p>23 Darren Harris, which is going to be -- I'm sorry.</p> <p>24 I'm looking at the wrong copy. This is the</p> <p>25 paginated one. Page 27.</p>
<p style="text-align: right;">Page 269</p> <p>1 she tell you that those were the first retention</p> <p>2 schedules produced -- created by Johnson &</p> <p>3 Johnson?</p> <p>4 MR. COX: Object to form.</p> <p>5 THE WITNESS: She indicated that there</p> <p>6 were -- and I'm going to refer to her exact words</p> <p>7 if that's okay.</p> <p>8 BY MR. SWANSON:</p> <p>9 Q. That's fine.</p> <p>10 A. Or what I -- what I wrote from her words.</p> <p>11 So this is on page 36, a few lines down.</p> <p>12 "Created retention schedule and aligned boxes."</p> <p>13 I took that to mean that she created the</p> <p>14 retention schedule where none had existed for that</p> <p>15 department or facility.</p> <p>16 Q. But anything more than that, you don't</p> <p>17 know as to whether or not those were the first</p> <p>18 retention schedules applicable to her department</p> <p>19 or something broader than her department; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Are the current Johnson & Johnson record</p> <p>22 retention schedules for the consumer companies and</p> <p>23 the global retention -- well, let's start with the</p> <p>24 consumer companies.</p> <p>25 Are they mandatory?</p>	<p style="text-align: right;">Page 271</p> <p>1 So in that note he indicated that ten</p> <p>2 years ago in approximately 2009, the Skillman and</p> <p>3 Fort Washington materials were -- were</p> <p>4 consolidated.</p> <p>5 Q. Where is that note on the page?</p> <p>6 A. About ten lines down.</p> <p>7 Q. Okay. It says, "Ten years ago Skillman</p> <p>8 went under Fort Washington team, had different</p> <p>9 SOPs for each."</p> <p>10 What does that mean?</p> <p>11 A. Standard operating procedures.</p> <p>12 Q. As to what? Document retention?</p> <p>13 A. How to effectuate document retention, yes.</p> <p>14 Q. How does that answer my question about</p> <p>15 whether or not the policies were mandatory? When</p> <p>16 they became mandatory.</p> <p>17 A. Yes. I -- I didn't see the precise answer</p> <p>18 to that question in -- in his comments. I -- I</p> <p>19 have a retention schedule from 1997 that applies</p> <p>20 to Johnson & Johnson Consumer Products Companies.</p> <p>21 That's the earliest schedule I'm aware of. There</p> <p>22 may be mandatory schedules prior to that time.</p> <p>23 Q. Now, did that 1997 schedule, which is</p> <p>24 marked as Exhibit 13 to your deposition, that</p> <p>25 doesn't say on there that it's mandatory, does it?</p>

<p style="text-align: right;">Page 272</p> <p>1 In fact, it calls it a "guideline." Doesn't it 2 say "guideline" right in the title, "Johnson & 3 Johnson Consumer Products Companies Guideline 4 Records Retention Schedule"? True?</p> <p>5 A. Yes, I see that.</p> <p>6 Q. But the current ones don't say 7 "guideline," do they?</p> <p>8 A. I don't see that on the current ones.</p> <p>9 Q. And when you were speaking to Rosina 10 Bruno-Sheerin, she told you that the prior global 11 records retention schedules were not mandatory but 12 were only a suggestion.</p> <p>13 Do you recall that?</p> <p>14 A. I'd like to reference...</p> <p>15 Q. It's page 37.</p> <p>16 A. Can you reference me to that point on 17 page 37?</p> <p>18 Q. Yes. It's about -- a little more than 19 halfway down, it says, "in 2006 tried to make 20 records, titles more uniform in standardized 21 retention periods. Old corporate program called 22 'global records retention scheduled' was only a 23 suggestion."</p> <p>24 Do you see that?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">Page 274</p> <p>1 was available to be used by the -- the entities if 2 they wished.</p> <p>3 BY MR. SWANSON:</p> <p>4 Q. And that would include -- would that 5 include overseas entities? And if you don't know, 6 just say you don't know.</p> <p>7 A. Yeah. I don't know.</p> <p>8 Q. Okay. And, again, is Rosina Bruno-Sheerin 9 the person we should be talking to about that?</p> <p>10 MR. COX: Object to form.</p> <p>11 THE WITNESS: About which topic?</p> <p>12 BY MR. SWANSON:</p> <p>13 Q. About whether or not the global records 14 retention schedules were applicable to overseas 15 operating divisions or subsidiaries of Johnson & 16 Johnson corporate.</p> <p>17 A. Well, inasmuch as GRRS is a corporate 18 vehicle or was a corporate vehicle, I would think 19 a person in the corporate records program would be 20 the best person to elicit that from.</p> <p>21 Q. Who would that be?</p> <p>22 A. That could be Cindy Aden. That could be 23 Karen Skellington.</p> <p>24 Q. Did you speak to them about that issue, 25 the applicability of the global records retention</p>
<p style="text-align: right;">Page 273</p> <p>1 Q. So until 2006 or sometime around there -- 2 well, let me ask you, because she's referring to a 3 2006 date and trying to standardize the retention 4 schedules. When she says this global records 5 retention schedule is only a suggestion, until 6 what year after 2006 was it still only a 7 suggestion?</p> <p>8 MR. COX: Object to the form.</p> <p>9 THE WITNESS: Well, the GRRS was not a 10 consumer products schedule. That was a corporate 11 schedule. That is a schedule that the Johnson & 12 Johnson corporate had devised to be available to 13 the franchise companies if they wished to use it.</p> <p>14 In 2015, the GRRS was replaced with the 15 ERS, the enterprise retention schedule. At that 16 point adoption or harmonization with the ERS 17 became mandatory.</p> <p>18 BY MR. SWANSON:</p> <p>19 Q. So until 2015, if a particular Johnson & 20 Johnson operating company or department didn't 21 have its own retention schedule, then it could 22 comply with corporate's global record retention 23 schedule, which was only a suggestion; correct?</p> <p>24 MR. COX: Object to the form.</p> <p>25 THE WITNESS: My understanding is that it</p>	<p style="text-align: right;">Page 275</p> <p>1 schedule to Johnson & Johnson International or 2 Johnson & Johnson Hong Kong or Johnson & Johnson 3 Philippines, for example?</p> <p>4 A. I don't recall speaking about that.</p> <p>5 Q. So -- but until 2015, this global records 6 retention schedule was just a suggestion because 7 it existed until 2015 when it was replaced by the 8 ER -- the enterprise retention schedule; true?</p> <p>9 A. Yes.</p> <p>10 Q. So that just means by definition, then, if 11 an operating division or unit or department of 12 Johnson & Johnson did not have its own retention 13 schedule at the time, they either wouldn't have a 14 retention schedule or they could use this global 15 records retention schedule; true?</p> <p>16 MR. COX: Object to the form.</p> <p>17 THE WITNESS: I'm not familiar if both of 18 those alternatives were available. I know that 19 the schedule existed prior to 2015. I don't know 20 whether it was mandatory or not in the absence of 21 another schedule.</p> <p>22 BY MR. SWANSON:</p> <p>23 Q. Well, Rosina Bruno-Sheerin said it was 24 only a suggestion; true?</p> <p>25 MR. COX: Object to the form.</p>

<p style="text-align: right;">Page 276</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. Old corporate program, that's referring to</p> <p>3 GRRS, was only a suggestion. That's what she</p> <p>4 meant; correct?</p> <p>5 MR. COX: Object to the form.</p> <p>6 THE WITNESS: In the -- in the 2006 time</p> <p>7 frame I believe she was referring. Yes. I -- she</p> <p>8 was referring to the 2006 period.</p> <p>9 BY MR. SWANSON:</p> <p>10 Q. How -- why do you say that that refers to</p> <p>11 2006 period? The old corporate program you just</p> <p>12 told me was GRRS and it wasn't replaced until 2015</p> <p>13 by ERS. So the old program is GRRS; true?</p> <p>14 A. Yes.</p> <p>15 MR. COX: Object to the form.</p> <p>16 BY MR. SWANSON:</p> <p>17 Q. Okay. So are you telling me that, even</p> <p>18 though she said the old corporate program called</p> <p>19 GRRS was only a suggestion, are you telling me</p> <p>20 that GRRS went from only being a suggestion to</p> <p>21 being mandatory at some point?</p> <p>22 A. No.</p> <p>23 Q. Okay. So it was only a suggestion until</p> <p>24 it was replaced by ERS; true?</p> <p>25 A. That's my -- my understanding. But I</p>	<p style="text-align: right;">Page 278</p> <p>1 about any division or subsidiary doing that with</p> <p>2 the GRRS, do you?</p> <p>3 A. Correct.</p> <p>4 Q. So I think we discussed this, but Johnson</p> <p>5 & Johnson agrees that in order to follow its own</p> <p>6 retention schedules -- well, its own document and</p> <p>7 information policies and programs, people need to</p> <p>8 be trained; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And you learned from your interviews that</p> <p>11 until 2008, a large number of people at Johnson &</p> <p>12 Johnson were still untrained in records retention</p> <p>13 policy; true?</p> <p>14 MR. COX: Object to the form.</p> <p>15 THE WITNESS: Can we reference a citation</p> <p>16 for that somewhere in my notes?</p> <p>17 BY MR. SWANSON:</p> <p>18 Q. Yes. It's page 29 of your notes.</p> <p>19 Okay. Let's be specific here. This is an</p> <p>20 interview of Joan -- Joann Dodd?</p> <p>21 A. Yes.</p> <p>22 Q. Senior analyst, records management; true?</p> <p>23 A. Yes.</p> <p>24 Q. And she started in 2007-2008 according to</p> <p>25 your notes; is that right?</p>
<p style="text-align: right;">Page 277</p> <p>1 don't know the particulars. In other words, was</p> <p>2 it a suggestion if the operating company didn't</p> <p>3 have a schedule in place or was it a suggestion if</p> <p>4 the operating company had a schedule in place they</p> <p>5 could opt to use either. I don't know the</p> <p>6 particulars between those two scenarios.</p> <p>7 Q. Okay. But, to the extent it was being</p> <p>8 used, it was, when it existed, only a suggestion;</p> <p>9 true?</p> <p>10 MR. COX: Object to the form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. SWANSON:</p> <p>13 Q. And -- which means if a company or</p> <p>14 division or department did not at the time have an</p> <p>15 operative record retention schedule, then it could</p> <p>16 have the option of using the GRRS; true?</p> <p>17 A. That is my understanding.</p> <p>18 Q. But if they had their own records</p> <p>19 retention schedule, then they may or may not use</p> <p>20 the GRRS; true? Because it wasn't mandatory.</p> <p>21 A. There are other in-between possibilities.</p> <p>22 Q. What's the in-between possibility?</p> <p>23 A. They take the GRS, use it as a model, and</p> <p>24 then alter it to suit their own requirements.</p> <p>25 Q. You don't have any specific information</p>	<p style="text-align: right;">Page 279</p> <p>1 A. In the records program, yes.</p> <p>2 Q. And so she's in the records program.</p> <p>3 Records program for which companies?</p> <p>4 A. Consumer, Inc.</p> <p>5 Q. Johnson & Johnson Consumer, Inc. And,</p> <p>6 again, that's the company that's marketing and</p> <p>7 manufacturing the cosmetic talc products including</p> <p>8 baby powder and Shower to Shower; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see here where you wrote, "Back</p> <p>11 in 2008, 56 percent participation in recurring</p> <p>12 departmental training. Now 98. But would not" --</p> <p>13 "but would perform departmental audits."</p> <p>14 So in 2008, only 56 percent of the</p> <p>15 employees at Johnson & Johnson Consumer, Inc.,</p> <p>16 only 56 were trained in the records policies; is</p> <p>17 that right?</p> <p>18 A. No.</p> <p>19 Q. What does that mean?</p> <p>20 A. Recurring training, meaning that the --</p> <p>21 you come to the company as an employee, you</p> <p>22 receive records training. You were then required</p> <p>23 to get recurring training once or twice a year as</p> <p>24 you go forward in your -- in your job.</p> <p>25 Q. Does it say anything in your notes</p>

<p style="text-align: right;">Page 280</p> <p>1 about -- well, before I get there, what's the 2 purpose of recurring training?</p> <p>3 A. To reinforce the objectives and the 4 procedures for record retention, to inform 5 employees of any changes in those procedures.</p> <p>6 Q. Okay. And that's done currently at 7 Johnson & Johnson Consumer, Inc. How often is 8 that done, these reoccurring trainings?</p> <p>9 A. A couple times a year.</p> <p>10 Q. And so there's 44 percent of the people as 11 of 2008 were not getting recurring training; true?</p> <p>12 A. In 2008, I -- I would agree that that was 13 her point.</p> <p>14 Q. And what was the participate -- when 15 did -- do you have any information as of 2008 16 whether or not any initial training was done?</p> <p>17 A. I understand initial training was required 18 for people to get started in their job. I 19 understand that was mandatory. I could go back to 20 understand if that was a hundred percent or some 21 lesser number. I don't have that number at hand.</p> <p>22 Q. Where did you get the understanding that 23 there was as of 2008 a mandatory, or initial 24 training?</p> <p>25 A. I have -- it may be in my notes; it may</p>	<p style="text-align: right;">Page 282</p> <p>1 when we were talking about indicated that training 2 must be accomplished in 30 days for a new 3 employee.</p> <p>4 Q. Where does it say that?</p> <p>5 A. Your page 29, right after that section 6 that says the five SOPs.</p> <p>7 Q. Oh, "need training within 30 days"? 8 So that's referring to records management 9 training and records retention schedule training?</p> <p>10 A. Further down it indicates, "Training 11 included legal hold, departing associates, 12 retention procedures, roles."</p> <p>13 Q. Okay, but again, I believe the question 14 was, do you have any information of when that 15 started, training within 30 days of a new 16 employee?</p> <p>17 A. I do not.</p> <p>18 Q. And so you don't know even if that was 19 happening in 2005; true?</p> <p>20 A. I don't have specific information about 21 that.</p> <p>22 Q. And you don't know whether or not that 23 was being -- people were being trained at all as 24 to that 1997 records retention schedule, do you?</p> <p>25 A. I do not.</p>
<p style="text-align: right;">Page 281</p> <p>1 not. Over the years I have spoken to Johnson & 2 Johnson employees and understand that there is an 3 onboarding process that includes records training.</p> <p>4 Q. And so that initial training was something 5 that would be done -- well, first of all, who -- 6 do you remember who that was who told you that? 7 And do you know if it was as to Johnson & Johnson 8 Consumer, Inc. or the Johnson & Johnson Consumer 9 Companies?</p> <p>10 A. I would have to look through my notes. I 11 don't recall -- I know there have been references 12 to it. I don't recall the context for whom I 13 heard it from, and, to the extent that it's in my 14 notes, I can check.</p> <p>15 Q. And when -- what is -- I don't want you to 16 guess, but do you have any information about when, 17 what year Johnson & Johnson instituted records 18 retention and records policy training for new 19 employees?</p> <p>20 A. With your permission, I'm just going to 21 look through a couple of my notes and see if I 22 can't get some references to that.</p> <p>23 Q. Sure. Go ahead.</p> <p>24 A. Well, the first one I just found off the 25 bat was that Ms. Dodd just a few lines above from</p>	<p style="text-align: right;">Page 283</p> <p>1 Q. Now, if 44 percent of the folks aren't 2 going to reoccurring training as to 2008 and 3 somebody started a long time ago, they may have 4 never had the training; true?</p> <p>5 MR. COX: Object to the form.</p> <p>6 THE WITNESS: It's possible. I -- I think 7 Ms. Dodd made the point afterwards that there were 8 departmental audits that were conducted outside 9 the training to verify participation and 10 knowledge.</p> <p>11 BY MR. SWANSON:</p> <p>12 Q. Do you know the particulars of those 13 audits?</p> <p>14 A. No.</p> <p>15 Q. So, again, Joann Dodd would be the person 16 to talk -- for us to talk to about that; correct?</p> <p>17 MR. COX: Object to the form.</p> <p>18 THE WITNESS: With respect to that topic, 19 yes.</p> <p>20 BY MR. SWANSON:</p> <p>21 Q. And would you agree with me that, even if 22 training had started at the time of the initial 23 record retention schedules or going back to 1997, 24 that if somebody started right around then and 25 didn't have retraining, whatever knowledge they</p>

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1 had about the records retention would be variable
2 and it could be pretty stale, couldn't it?
3 MR. COX: Object to the form.
4 **THE WITNESS: It's -- it's possible. Her**
5 **point, to follow on to that statistic, was that**
6 **audits would detect a nonparticipation.**
7 BY MR. SWANSON:
8 Q. Where's the reference to audits again?
9 **A. Just under the 98 percent.**
10 Q. Well, you said something about detecting.
11 It just says here "but would perform departmental
12 audits."
13 Other than what you wrote there, those
14 five words, "but would perform departmental
15 audits," do you have any information about those
16 audits?
17 **A. Not about the audits themselves.**
18 Q. And were there any audits prior to 2008?
19 **A. She didn't indicate when the audits**
20 **started.**
21 Q. So there may not have been; true?
22 **A. I can't speak one way or the other.**
23 Q. I want to ask you about something
24 called -- referred to in your notes as "cleanout."
25 Are you familiar with that?

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1 **A. Yes.**
2 Q. Okay. And what was -- what does cleanout
3 in your notes in the several people you discuss
4 cleanout about, what does that refer to?
5 **A. Cleanout was a reference to a retired**
6 **WWRIM standard entitled "Records Cleanout**
7 **Standard."**
8 Q. And the cleanout was a -- it was called
9 the "cleanout event"; correct?
10 **A. Yes.**
11 Q. And the cleanout event was something that
12 happened annually; correct?
13 **A. Generally.**
14 Q. And it was mandatory; true?
15 **A. It was a participatory event, the -- like**
16 **an inventory day in a business.**
17 Q. So a manager of a department would oversee
18 the cleanout event, correct, or some manager in
19 the department?
20 **A. Managers and records coordinators and**
21 **records officers.**
22 Q. And they did that to ensure that everybody
23 was complying with the policy in doing the
24 cleanout event annually; true?
25 **A. Yes. Compliance was also the individual**

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1 **employee's responsibility, but in terms of**
2 **disposal of information, they were also there to**
3 **sign off on disposal of information.**
4 Q. And generally speaking, the cleanout event
5 was essentially if something is not currently
6 being held because of a retention schedule or a
7 legal hold, it should -- it has to be destroyed;
8 correct?
9 MR. COX: Object to the form.
10 **THE WITNESS: The -- the purpose of the**
11 **cleanout day was to give opportunity to the**
12 **employees to go through their materials, identify**
13 **those that were candidates for disposition, and**
14 **basically get themselves organized.**
15 BY MR. SWANSON:
16 Q. But when you say "disposition," what
17 you're really talking about is if the documents
18 were not subject to a hold or to a retention
19 period still, those documents, when you say
20 "disposition," you mean they were to be destroyed;
21 correct?
22 **A. That's right.**
23 MR. COX: Object to form.
24 BY MR. SWANSON:
25 Q. They can't keep them around. You

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1 destroyed those records; true?
2 MR. COX: Object to the form.
3 **THE WITNESS: That's right.**
4 BY MR. SWANSON:
5 Q. Now, I just got some of these today, these
6 WW worldwide records and information management
7 policies. So I apologize if I fumble around on
8 them a little bit, but I'm going to -- I want to
9 go through them a little bit with you.
10 You know, we probably should just for
11 your -- let's take that stack over there and put
12 it on top over there, I think, will help you out.
13 And then see what you've got underneath. Probably
14 keep the notes around. You're going to need
15 those.
16 Okay. And I think we marked, and
17 hopefully I can locate it, the Version 1.0 is
18 marked as Exhibit Number 25, and I believe you
19 have that.
20 I can show it to you there so you can see
21 what it looks like.
22 **A. 25. Here it is.**
23 Q. You got 25. Okay.
24 Do you have that in front of you?
25 **A. Yes, I do.**

<p style="text-align: right;">Page 288</p> <p>1 Q. And so this is the worldwide's record</p> <p>2 information management policy Version 1.0 dated</p> <p>3 July 2009; true?</p> <p>4 A. Yes.</p> <p>5 Q. And the Version 1.1, which was also</p> <p>6 produced and we will mark that, too, and the rest</p> <p>7 of the versions that were provided have quite a</p> <p>8 few pages, I don't know, 30, 40 pages, something</p> <p>9 like that. This one looks to be about four or</p> <p>10 five pages.</p> <p>11 Do you know where the rest of this</p> <p>12 document is?</p> <p>13 MR. COX: Object to the form.</p> <p>14 THE WITNESS: Did you say 1.1?</p> <p>15 BY MR. SWANSON:</p> <p>16 Q. No. 1.0 is what we're looking at.</p> <p>17 A. Okay.</p> <p>18 Q. I just referenced the other ones because</p> <p>19 they're --</p> <p>20 I need to get some water. I'll be back in</p> <p>21 two seconds. Pardon me.</p> <p>22 Okay. So you have Exhibit 25 in front of</p> <p>23 you?</p> <p>24 A. Yes.</p> <p>25 Q. And let's go ahead and --</p>	<p style="text-align: right;">Page 290</p> <p>1 A. Yes.</p> <p>2 Q. And we had already marked Versions 4 and</p> <p>3 5.</p> <p>4 Okay. So going back to Exhibit 25,</p> <p>5 Version Number 1.0, from July 31, 2009, where is</p> <p>6 the rest of the policy in terms of these various</p> <p>7 what you call "RIMS"?</p> <p>8 MR. COX: Object to the form.</p> <p>9 THE WITNESS: Assuming this is complete, I</p> <p>10 don't see the standards in Version 1.0.</p> <p>11 BY MR. SWANSON:</p> <p>12 Q. So as of July -- but you said assuming</p> <p>13 this is complete.</p> <p>14 Do you know if this is complete?</p> <p>15 A. I have not seen this Version 1.0 before</p> <p>16 today.</p> <p>17 Q. Okay. Do you see on all of these WWRIM</p> <p>18 policies that were just produced today to us this</p> <p>19 morning, Versions 1.0 through Version 3, why are</p> <p>20 there no Bates numbers on those documents?</p> <p>21 A. I -- I can't speak to that. I -- that</p> <p>22 would be a lawyer question.</p> <p>23 Q. Now, the record retention schedule that</p> <p>24 was produced, the first one that you have, goes</p> <p>25 back to 1997.</p>
<p style="text-align: right;">Page 289</p> <p>1 Do you have -- do you have Policy 1.1?</p> <p>2 A. I don't believe I do.</p> <p>3 MR. SWANSON: Let's see. Let's mark this</p> <p>4 one for you.</p> <p>5 (Whereupon, Plaintiff's Exhibit 27 was</p> <p>6 marked for identification.)</p> <p>7 BY MR. SWANSON:</p> <p>8 Q. So Johnson & Johnson worldwide records and</p> <p>9 information management policy Version 1.1,</p> <p>10 September 30, 2009, that is marked as Exhibit 27.</p> <p>11 Do you have that one in front of you?</p> <p>12 A. I do.</p> <p>13 Q. Okay. Let me just go ahead and give you</p> <p>14 the rest of them, too, so you've got them in front</p> <p>15 of you.</p> <p>16 MR. SWANSON: And Version 2 of the WWRIM</p> <p>17 policy dated 2011 is Exhibit 28.</p> <p>18 (Whereupon, Plaintiff's Exhibit 28 was</p> <p>19 marked for identification.)</p> <p>20 (Whereupon, Plaintiff's Exhibit 29 was</p> <p>21 marked for identification.)</p> <p>22 BY MR. SWANSON:</p> <p>23 Q. And Version 3.0 of the WWRIM policy dated</p> <p>24 April 1, 2014, is Exhibit 29.</p> <p>25 Do you have that in front of you?</p>	<p style="text-align: right;">Page 291</p> <p>1 Was there a records and information</p> <p>2 management policy or policies that went back to</p> <p>3 1997?</p> <p>4 MR. COX: Object to the form.</p> <p>5 THE WITNESS: My understanding is that</p> <p>6 there were policies that accompanied the</p> <p>7 schedules.</p> <p>8 BY MR. SWANSON:</p> <p>9 Q. Okay. And I did not see those policies</p> <p>10 produced with the records retention schedules that</p> <p>11 were produced to us.</p> <p>12 Do you have those?</p> <p>13 A. No.</p> <p>14 Q. Do you know where those are?</p> <p>15 A. My understanding is that the records</p> <p>16 department is continuing to research those</p> <p>17 materials.</p> <p>18 Q. Is it also fair to say that those -- those</p> <p>19 record retention policies prior to 2009 would have</p> <p>20 also been documents that should have been kept for</p> <p>21 the -- left for the corporation?</p> <p>22 A. I'd have to go back to the schedule and</p> <p>23 see how the schedule is defined.</p> <p>24 Do we have a reference to that?</p> <p>25 Q. Is that page 251 of Exhibit 13, I believe?</p>

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<p>1 That's the section on records management.</p> <p>2 You see records management training</p> <p>3 information, records destruction authorization,</p> <p>4 records. Oh, sorry -- yeah, 251, records</p> <p>5 retention documentation.</p> <p>6 And if you don't know, that's fine. Oh,</p> <p>7 if you see records -- if you look at -- let me</p> <p>8 just ask you differently: Do you know what the</p> <p>9 retention period was on records and information</p> <p>10 management policy prior to --</p> <p>11 A. Well, I was looking.</p> <p>12 Q. -- 2009?</p> <p>13 A. I was looking and I found on page 248 of</p> <p>14 the '97 schedule an indication that policy</p> <p>15 documents, which are defined as written</p> <p>16 descriptives of the operating principles, are</p> <p>17 directives pertaining to the organization, are to</p> <p>18 be held S plus 8.</p> <p>19 Q. S plus 8. So that would be 2009 to 2017;</p> <p>20 true?</p> <p>21 A. So, in other words, the year that they</p> <p>22 were superseded plus 8.</p> <p>23 Q. Oh, okay. I see. So presumably, then,</p> <p>24 you would expect that there should be some</p> <p>25 policies still, although we'd have to look at</p>	<p>1 prior to 2009?</p> <p>2 A. I don't have specific answers to that. My</p> <p>3 understanding is that it was a -- had been in</p> <p>4 place for a number of years based on the fact that</p> <p>5 the company was working primarily in paper going</p> <p>6 back many years and that the cleanout standard and</p> <p>7 event was organized to organize -- was held to</p> <p>8 help employees organize paper documents primarily.</p> <p>9 Q. And do you know -- you don't know</p> <p>10 specifically how many years that goes back,</p> <p>11 though; true?</p> <p>12 A. Correct.</p> <p>13 Q. And this was -- the policy -- this policy</p> <p>14 WWRIM is a worldwide policy; correct?</p> <p>15 A. Yes.</p> <p>16 Q. So that would affect what's going on in</p> <p>17 the Philippines, J&J Philippines, J&J Hong Kong;</p> <p>18 true?</p> <p>19 A. It -- by implication worldwide, yes, would</p> <p>20 apply worldwide.</p> <p>21 Q. Because it says it provides requirements</p> <p>22 for Johnson & Johnson operating companies; true?</p> <p>23 A. Yes.</p> <p>24 Q. It says, "Reference terms" -- under</p> <p>25 "definitions," it says, "Reference terms used in</p>
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<p>1 subsequent record retention schedule to see if</p> <p>2 that stayed consistent; true?</p> <p>3 A. I'd have to do the arithmetic, frankly.</p> <p>4 Q. All right. Okay. Let me ask you about --</p> <p>5 I've got some questions on Number -- Version 1.1,</p> <p>6 that's Exhibit 27. Okay.</p> <p>7 If you go to RIMS Number 3 in that</p> <p>8 document, which is about, looks like about eight</p> <p>9 pages in?</p> <p>10 A. Records cleanout events standard.</p> <p>11 Q. You got that right?</p> <p>12 A. Okay.</p> <p>13 Q. And this is referring to the cleanout</p> <p>14 event, the annual cleanout event that we were</p> <p>15 talking about earlier; right?</p> <p>16 A. Yes.</p> <p>17 Q. And this indicates that this -- this would</p> <p>18 have been in effect September 30, 2009; true?</p> <p>19 A. Yes.</p> <p>20 Q. Were there cleanout events prior to</p> <p>21 September 2009?</p> <p>22 A. I have general knowledge -- and it may not</p> <p>23 be reflected in my notes -- I have general</p> <p>24 knowledge that -- that there were.</p> <p>25 Q. How far back were there cleanout events</p>	<p>1 the standard are found in the worldwide's record</p> <p>2 and information management program glossary."</p> <p>3 Had that been provided to us?</p> <p>4 A. I'm looking at the definitions section at</p> <p>5 the front of the policy. I don't know if that is</p> <p>6 the glossary that's being referenced or not.</p> <p>7 Q. What page is that?</p> <p>8 A. The first page.</p> <p>9 Q. That doesn't look like a glossary to me.</p> <p>10 Does that look like a glossary to you,</p> <p>11 under "definitions"?</p> <p>12 A. I don't know.</p> <p>13 Q. Wouldn't a glossary list the various terms</p> <p>14 that are used and define each of the terms?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And this definition just is a</p> <p>17 definition of disposition, standard document hold,</p> <p>18 records retention schedule, compliance, and</p> <p>19 standard; true?</p> <p>20 A. I don't believe it's compliance.</p> <p>21 Q. Okay. But the rest of those terms that</p> <p>22 are in -- the six italicized terms are the ones</p> <p>23 that are defined there; right?</p> <p>24 A. Yes.</p> <p>25 Q. Now, this says, "Management program</p>

<p style="text-align: right;">Page 296</p> <p>1 glossary," the reference that I was referring to</p> <p>2 under "cleanout event standard." And I don't see</p> <p>3 anything here that says -- do you see anything in</p> <p>4 this document that's been provided to us called</p> <p>5 "Worldwide records and information management</p> <p>6 program glossary"?</p> <p>7 A. What I'm going to do is look at a later</p> <p>8 version and see if that language is still...</p> <p>9 Q. Okay. But please just answer my question</p> <p>10 first.</p> <p>11 A. I do not.</p> <p>12 Q. Do you see something called a glossary in</p> <p>13 this document, Exhibit 27?</p> <p>14 A. I do not.</p> <p>15 Q. Okay. So you didn't -- you didn't find a</p> <p>16 glossary, did you?</p> <p>17 A. Correct.</p> <p>18 MR. SWANSON: Counsel, can you please</p> <p>19 provide the glossary to us that's being referred</p> <p>20 to there?</p> <p>21 MR. COX: Take the request under</p> <p>22 advisement.</p> <p>23 BY MR. SWANSON:</p> <p>24 Q. Going back to Exhibit 27. You got that in</p> <p>25 front of you; right? We're at RIMS 3, page 1?</p>	<p style="text-align: right;">Page 298</p> <p>1 Q. Okay. Is there some specific instance</p> <p>2 you're aware of where you don't agree with that?</p> <p>3 A. No. But I think -- I think we're talking</p> <p>4 about the same thing. The purpose of the day, the</p> <p>5 day itself, is an organizational day that then</p> <p>6 results in the ability to clean out certain</p> <p>7 materials that are candidates for destruction.</p> <p>8 Q. And do you see under 4.2, under "minimum,"</p> <p>9 these are minimum implementation standards; true?</p> <p>10 A. I see that, yes.</p> <p>11 Q. And under 4.2, it says, "The operating</p> <p>12 company shall conduct a cleanout event on an</p> <p>13 annual basis."</p> <p>14 So it means it's mandatory and it has to</p> <p>15 be done annually; true?</p> <p>16 A. Based on this, yes.</p> <p>17 Q. And if you turn to the next page, Page</p> <p>18 Number 2 of RIMS Number 3 in the WWRIM version</p> <p>19 from September 30, 2009, under 4.3, it defines all</p> <p>20 of the -- it lists all of the types of documents</p> <p>21 that are subject to the cleanout; true?</p> <p>22 A. Yes.</p> <p>23 Q. And it says, "The cleanout event conducted</p> <p>24 by the operating company shall apply the</p> <p>25 requirements of the records retention schedule to</p>
<p style="text-align: right;">Page 297</p> <p>1 A. Yes.</p> <p>2 Q. Okay. If you look at -- and, again,</p> <p>3 "cleanout" in this context means disposition,</p> <p>4 which means destruction; true?</p> <p>5 MR. COX: Object to the form.</p> <p>6 THE WITNESS: It may result in that. It</p> <p>7 may just result in materials being better</p> <p>8 organized.</p> <p>9 BY MR. SWANSON:</p> <p>10 Q. Where does it say that, "organized"?</p> <p>11 A. Well, that is what I understand the</p> <p>12 purpose of the day is, is to allow employees a</p> <p>13 chance to look at their materials, determine what</p> <p>14 needs to be better aligned with the records</p> <p>15 schedule, dispositions, organized. It is an</p> <p>16 organizational day which may result in the</p> <p>17 materials being earmarked for disposition.</p> <p>18 Q. Now, you said before and I don't want to</p> <p>19 have to redo all this, but on cleanout day, if</p> <p>20 it's not under retention pursuant to the schedule</p> <p>21 and it's not under a legal hold, it gets</p> <p>22 destroyed; right?</p> <p>23 MR. COX: Object to the form.</p> <p>24 THE WITNESS: Generally I would agree.</p> <p>25 BY MR. SWANSON:</p>	<p style="text-align: right;">Page 299</p> <p>1 all media formats, hardcopy and electronic,</p> <p>2 originals or copies, and draft documents during</p> <p>3 the cleanout event activities."</p> <p>4 True?</p> <p>5 A. Yes.</p> <p>6 Q. So it -- it pertains to all types of</p> <p>7 documents, not just paper documents; correct?</p> <p>8 A. Correct.</p> <p>9 Q. There is a reference to a cleanout</p> <p>10 communication kit.</p> <p>11 Have you seen a cleanout communication</p> <p>12 kit?</p> <p>13 A. Can you reference me to that sentence?</p> <p>14 Q. That is under 4.5. "Instructions for</p> <p>15 accessing and reviewing hold notes will be</p> <p>16 provided in the cleanout communication kit."</p> <p>17 A. Yes, I see that.</p> <p>18 Q. Do you see that?</p> <p>19 A. Yes. I do now.</p> <p>20 Q. What is the "cleanout communication kit"?</p> <p>21 A. I don't know.</p> <p>22 Q. Did it set forth the methods of destroying</p> <p>23 or disposing of documents that were no longer</p> <p>24 under legal hold or retention?</p> <p>25 A. Well, I can't speak to the contents of the</p>

<p style="text-align: right;">Page 300</p> <p>1 kit itself, but I have general knowledge that</p> <p>2 users were provided instructions, and I also have</p> <p>3 an understanding that users were provided lists of</p> <p>4 legal holds.</p> <p>5 Q. And the list of instructions would include</p> <p>6 how to go about destroying documents that weren't</p> <p>7 under a legal hold or retention; correct?</p> <p>8 MR. COX: Object to the form.</p> <p>9 THE WITNESS: They would include</p> <p>10 instructions how to identify them and bring them</p> <p>11 to the manager or records officers for approval.</p> <p>12 BY MR. SWANSON:</p> <p>13 Q. But would it include instructions about</p> <p>14 how to go about destroying them? I mean, because,</p> <p>15 for example, if I've got emails on my computer and</p> <p>16 they're not under a legal hold or a retention and</p> <p>17 I've come to the cleanout event for the year and I</p> <p>18 know if those aren't on retention when I'm going</p> <p>19 through my stuff, these have to be thrown out,</p> <p>20 right, destroyed, disposed of, does this cleanout</p> <p>21 communication kit tell me how to go about doing</p> <p>22 that so that I eliminate all trace of them?</p> <p>23 MR. COX: Object to the form.</p> <p>24 THE WITNESS: I can -- I can't speak to</p> <p>25 the content of the instructions. I can speak to</p>	<p style="text-align: right;">Page 302</p> <p>1 them? For example, shredding them?</p> <p>2 MR. COX: Object to the form.</p> <p>3 THE WITNESS: I don't know, as I mentioned</p> <p>4 before, what's in the cleanout instructions. I do</p> <p>5 know that for those paper documents, in your</p> <p>6 example, on cleanout days they wheeled these blue</p> <p>7 containers on to the floor to be used for</p> <p>8 destruction of paper materials, if approved.</p> <p>9 BY MR. SWANSON:</p> <p>10 Q. So the approved materials for destruction,</p> <p>11 they're in a bin that wheels out; is that right?</p> <p>12 A. That is how a cleanout day was described</p> <p>13 to me for the sake of paper materials.</p> <p>14 Q. So somebody was given the task of wheeling</p> <p>15 this to each office or was it put in a central</p> <p>16 location, do you know?</p> <p>17 A. No.</p> <p>18 Q. And then if you are -- if the records were</p> <p>19 supposed to be destroyed under this cleanout event</p> <p>20 policy, you'd put them in that bin; is that right?</p> <p>21 A. With approvals, yes.</p> <p>22 Q. What do you mean "with approvals"?</p> <p>23 A. With the managers and records coordinators</p> <p>24 approvals, they could be put in the bin.</p> <p>25 Q. And what did that approval consist of?</p>
<p style="text-align: right;">Page 301</p> <p>1 my general knowledge of how users were using email</p> <p>2 at that point and how the cleanout days operated</p> <p>3 in general.</p> <p>4 BY MR. SWANSON:</p> <p>5 Q. I didn't ask that. So you don't know if</p> <p>6 this cleanup communication kit had those</p> <p>7 instructions about how to go about destroying</p> <p>8 emails that were -- should no longer be</p> <p>9 retained -- or other documents; true?</p> <p>10 A. The reason I can speak to email is my</p> <p>11 knowledge of how emails were retained at that</p> <p>12 point in time.</p> <p>13 Q. Okay. But you're not answering the</p> <p>14 question. I understand you have information that</p> <p>15 you want to tell me, but I'm just asking you a</p> <p>16 very simple question, which is: Do you know if</p> <p>17 this kit told them how -- employees how they</p> <p>18 should destroy the records? Let me give you an</p> <p>19 example. Forget email for a second.</p> <p>20 Paper documents, okay? I've got documents</p> <p>21 in my office, I'm a Johnson & Johnson employee.</p> <p>22 They're not under records retention, they're not</p> <p>23 under a hold anymore, and I know I'm supposed to</p> <p>24 destroy them.</p> <p>25 Do I have an instruction on destroying</p>	<p style="text-align: right;">Page 303</p> <p>1 A. That the employee has been verified to</p> <p>2 have confirmed the records period and the lack of</p> <p>3 an applicable legal hold or other reason why the</p> <p>4 records should be retained.</p> <p>5 Q. And is that in the WWRIM policy? Is that</p> <p>6 written out, that there had to be approval?</p> <p>7 A. I don't know.</p> <p>8 Q. So where did you get that information</p> <p>9 specifically that somebody had to specifically</p> <p>10 approve an employee's destruction of records</p> <p>11 pursuant to the cleanout policy?</p> <p>12 A. I had interviewed in the past Karen</p> <p>13 Skellington and other records officers who</p> <p>14 described the procedure. I'm not sure if it's in</p> <p>15 these notes or not.</p> <p>16 Q. And specifically what did Karen</p> <p>17 Skellington say about what the manager or</p> <p>18 whoever's role was in signing off on that and</p> <p>19 approving it?</p> <p>20 A. I don't have more specifics than -- than</p> <p>21 that at this point.</p> <p>22 Q. Do you know if there was any kind of</p> <p>23 documentation created?</p> <p>24 A. I have general knowledge that the</p> <p>25 sign-offs were in physical form, that there</p>

<p style="text-align: right;">Page 304</p> <p>1 were -- they were physical sign-offs. What 2 documentation that created I don't know. 3 Q. Do you know -- have you seen that 4 documentation? 5 MR. COX: Object to the form. 6 THE WITNESS: I don't recall. 7 BY MR. SWANSON: 8 Q. What's the retention policy of that 9 documentation of sign-offs, if you know? 10 A. I don't. 11 Q. The cleanout day, would that include 12 videos? 13 MR. COX: Object to the form. 14 BY MR. SWANSON: 15 Q. It says all media formats; correct? 16 A. Yeah. I don't have any better 17 interpretation than that. 18 Q. Would include CDs, correct, all media 19 formats, including hardcopy, electronic? 20 A. That would suggest to me that CDs would be 21 included. 22 Q. Did it include, for example, talc samples? 23 A. I would not conclude that based on my read 24 of the policy. 25 Q. What -- and why is that?</p>	<p style="text-align: right;">Page 306</p> <p>1 A. Yes. Suspends operation of the policy. 2 Q. Right. Okay. If you look at RIMS 3, 3 page 3. Here it is. I knew I saw that in there. 4 You see under 4.6 it talks about a 5 cleanout communication kit which will contain at 6 minimum the information listed below? 7 A. Yes. 8 Q. And that includes the proper methods of 9 destruction and deletion; correct? 10 A. I see that, yes. 11 Q. So presumably if we had the cleanout 12 communications kit, that would tell us 13 specifically how to destroy, like, paper documents 14 and that sort of thing; true? 15 A. For that particular event, yes. 16 Q. And under 4.7 it says, "The activities and 17 participation shall be documented and reported." 18 Again, does Johnson & Johnson -- you don't 19 know how long it retains those reports, do you? 20 A. Correct. 21 Q. Do you know if it still has them, back to 22 2009, for example? 23 A. I don't know one way or the other. 24 Q. Under -- at the very bottom it says, "new 25 standard."</p>
<p style="text-align: right;">Page 305</p> <p>1 A. I don't see where samples would be defined 2 as a -- as a record. 3 Q. Was there an equivalent cleanout policy 4 for talc samples and talc grids, if you know? 5 A. I'm not aware of such a policy. 6 Q. But samples, things like samples and grids 7 that were relating to, let's say, testing, if it 8 was -- if talc was being tested and a particular 9 sample was tested and there were -- do you know 10 what a TEM grid is that's generated from 11 electronic microscopy? Generally, you know, 12 you've heard of it; right? 13 A. I've heard the term "grids." 14 Q. Okay. And do you know -- the policies -- 15 at some point, did the retention policies have 16 something to say about that kind of physical 17 evidence like a sample or a grid? 18 MR. COX: Object to the form. 19 THE WITNESS: Not that I'm aware. 20 BY MR. SWANSON: 21 Q. So at page 2 of RIMS 3, you see under 22 4.33, and it just puts in writing there what we 23 had talked about, which is that essentially a 24 document hold suspends the direction -- the 25 destruction or deletion of records; correct?</p>	<p style="text-align: right;">Page 307</p> <p>1 Do you see that, "Version 1.0"? 2 A. Yes. 3 Q. It says, "new document issued," has the 4 date 30th of September 2009. 5 But it has that under -- it says "revision 6 history." 7 So was that a revision or not? 8 A. Well, I believe that the -- the 9 overarching policy is 1.1, but this is the first 10 release of the records cleanout standards, so it's 11 designated 1.0. 12 Q. So let's look at the subsequent version of 13 this. Exhibit 28. 14 Do you have that in front of you? 15 A. Yes, I do. 16 Q. If you go to RIMS 3. It's seven pages in 17 or something like that. 18 Do you have that in front of you? 19 A. Yes. 20 Q. And this version, Version 2.0, was dated 21 January 31, 2011; right? 22 A. Yes. 23 Q. And do you see now that it's called the 24 "records cleanup events standard"? 25 A. Yes.</p>

<p style="text-align: right;">Page 308</p> <p>1 Q. This is the same basic policy, though;</p> <p>2 correct?</p> <p>3 MR. COX: Object to the form.</p> <p>4 THE WITNESS: I mean, subject to the</p> <p>5 revision history on page 3, yes.</p> <p>6 BY MR. SWANSON:</p> <p>7 Q. Okay. So there was some sort of changes,</p> <p>8 fine-tuning to the policy at that point; is that</p> <p>9 right?</p> <p>10 A. Yeah. They are listed in the -- in the</p> <p>11 table.</p> <p>12 Q. Why was the name changed from "cleanout"</p> <p>13 to "cleanup"?</p> <p>14 A. Well, I can only point to the revision</p> <p>15 history that says that for the law department,</p> <p>16 that change was requested.</p> <p>17 Q. Do you know why the law department decided</p> <p>18 to call it a "cleanup" instead of a "cleanout"?</p> <p>19 A. No.</p> <p>20 Q. Did the -- now, when you interviewed</p> <p>21 folks -- and I think there were four or five of</p> <p>22 them -- about this, they all referred to it as</p> <p>23 "cleanout," didn't they?</p> <p>24 A. I would have to check. There's some sort</p> <p>25 of a search. I can do some quick searches.</p>	<p style="text-align: right;">Page 310</p> <p>1 MR. COX: Object to the form.</p> <p>2 THE WITNESS: I just wrote down as they</p> <p>3 told me.</p> <p>4 BY MR. SWANSON:</p> <p>5 Q. But when I first asked you about</p> <p>6 "cleanout," you understood what I meant</p> <p>7 immediately; right?</p> <p>8 A. Yes.</p> <p>9 Q. From those conversations?</p> <p>10 A. Yes.</p> <p>11 Q. And did they continue to -- did Johnson &</p> <p>12 Johnson continue to call those kits "cleanout</p> <p>13 communication kits," do you know?</p> <p>14 A. I don't know.</p> <p>15 MR. COX: Are we at a good point for a</p> <p>16 short break?</p> <p>17 MR. SWANSON: Sure. Yeah.</p> <p>18 THE VIDEOGRAPHER: This marks the end of</p> <p>19 Media Number 2 in the deposition of James</p> <p>20 Mittenthal. We are going off the record at 11:46.</p> <p>21 (Recess taken.)</p> <p>22 THE VIDEOGRAPHER: On the record at</p> <p>23 12:03 p.m. This marks the start of Media Number 3</p> <p>24 in the deposition of James Mittenthal.</p> <p>25 Counsel, you may continue.</p>
<p style="text-align: right;">Page 309</p> <p>1 Q. So let me -- if you look at -- I can give</p> <p>2 you some references there to help you out.</p> <p>3 Page 5 -- page 30, 31, 34, and 55. And you're</p> <p>4 looking at your notes, and the paginated version</p> <p>5 of your notes is Exhibit 26.</p> <p>6 A. I'm sorry, one more time, please?</p> <p>7 Q. Oh. 5 is, I think, the first reference,</p> <p>8 to about two-thirds of the way down, the "annual</p> <p>9 cleanout days." This was...</p> <p>10 A. Yes. Kate Gillespie.</p> <p>11 Q. And then the next one was, I think, Dodd</p> <p>12 at page 30.</p> <p>13 You see "cleanout" at the bottom?</p> <p>14 A. Yes.</p> <p>15 Q. "Cleanout days" stopped around 2011?</p> <p>16 A. Yes.</p> <p>17 Q. So we don't need to go through each and</p> <p>18 every one of them, but these folks were still</p> <p>19 talking about "cleanout" at the point you</p> <p>20 interviewed them in 2018; correct?</p> <p>21 A. Yes.</p> <p>22 Q. So -- and yet the policy was to call it</p> <p>23 "cleanup" as of 2011. So it sounds like that</p> <p>24 never really caught on, did it, "cleanup" as</p> <p>25 opposed to "cleanout"?</p>	<p style="text-align: right;">Page 311</p> <p>1 (Whereupon, Plaintiff's Exhibit 30 was</p> <p>2 marked for identification.)</p> <p>3 BY MR. SWANSON:</p> <p>4 Q. Mr. Mittenthal, I'm handing you Exhibit 30</p> <p>5 and, Counsel, if you need to look at this, it's a</p> <p>6 portion of a records retention schedule, it</p> <p>7 appears to be.</p> <p>8 Do you have that in front of you?</p> <p>9 A. I do.</p> <p>10 Q. So this is the Johnson & Johnson Consumer</p> <p>11 records and information management records</p> <p>12 retention schedule department records and</p> <p>13 information management; right?</p> <p>14 A. It appears to be.</p> <p>15 Q. And this is -- is this the current one?</p> <p>16 A. I don't know. I'm just looking at the</p> <p>17 effective date, 14 May 2018, what it says on it.</p> <p>18 Q. It's recent, it's not current, but you're</p> <p>19 not sure if this is current; is that true?</p> <p>20 A. I would have to confirm that.</p> <p>21 Q. Okay. If you look at Page Number 2, do</p> <p>22 you see there's a retention schedule for records</p> <p>23 cleanup there?</p> <p>24 A. Yes.</p> <p>25 Q. And that would be -- that says for the</p>

<p style="text-align: right;">Page 312</p> <p>1 annual cleanup for Consumer U.S. 2 Do you see that? 3 A. Yes. 4 Q. "May include approval memos, cleanup kits 5 and/or housekeeping information"; right? 6 A. Yes. 7 Q. So that's -- that's the cleanout or 8 cleanup event that we were talking about before; 9 true? That's what that's referring to, the 10 records retention on the kits related to that? 11 MR. COX: Object to the form. 12 THE WITNESS: It appears to be so, yes. 13 BY MR. SWANSON: 14 Q. And so -- and the records retention on 15 that was how many years? 16 A. The time it's active plus ten years. 17 Q. So if there was a cleanout communication 18 kit as part of, let's say, the 2009 Version 1.1 19 policy that was being used, would "active" -- how 20 long would "active" be? 21 A. I don't know. I would want to consult the 22 definitions. 23 Q. Okay. So -- well, you don't believe that 24 in the WWRIM policy what is meant in this records 25 retention is defined by the term "active," do you?</p>	<p style="text-align: right;">Page 314</p> <p>1 10 years past the date of that policy; right? 2 A. Yes. 3 Q. Okay. That's all I have about that one. 4 Now, we had talked about how the cleanout 5 policy included various formats of records and 6 documentation; correct? 7 A. Yes. 8 Q. And -- "including hardcopy, all media 9 formats, electronic," that would include x-ray 10 imagery; true? 11 A. I don't know. 12 Q. Well, if there were -- if there were TEM 13 or SEM images on any of these media, that would be 14 a document included in the policy; right? 15 MR. COX: Object to the form. 16 THE WITNESS: I would want to look and 17 check the policy and see how they -- how they 18 define "document," if it includes that type of 19 media. I just don't know. 20 BY MR. SWANSON: 21 Q. Well, it says, "all media formats, 22 hardcopy and electronic, originals or copies, and 23 draft documents." 24 You're not thinking that this pertains 25 only to written words, are you?</p>
<p style="text-align: right;">Page 313</p> <p>1 A. I have seen somewhere here, on -- on 2 WWRIM, RIMS 12. 3 Q. Which exhibit is this? 4 A. This is -- the first version I grabbed was 5 Version 2.0. 6 Q. Okay. That's fine. Got it. 7 A. RIMS 12, page 2. And I may be able to 8 reference a later version that I was just looking 9 for a basic definition of "active." 10 Q. That's fine. 11 A. And it says, "Retain the record or 12 information while the document is active, in 13 force, or in use. Once the document is no longer 14 active, then the retention period starts and is 15 calculated." 16 Q. Good. So, in other words, the 2009 RIMS 17 got replaced by this 2011 one in January 2011. So 18 for the 2' -- those cleanout kits from the 2009 19 policy, they would be retained until 2021, 20 correct, according the that policy? 21 A. Yeah. I don't want to interpret what they 22 mean by the document being active. I don't know 23 how to interpret that against the cleanout 24 information. It may be that's the case. 25 Q. Okay. But at a minimum, it would be</p>	<p style="text-align: right;">Page 315</p> <p>1 A. No. 2 Q. Okay. So it would include images; 3 correct? It would include sound recordings on 4 those types of media? 5 MR. COX: Object to the form. 6 THE WITNESS: I'm going to double-check 7 the worldwide RIMS and see if there is a complete 8 definition of what they consider a record to be. 9 Okay. Actually, it's on the first page. 10 I'm once again looking at the 2.0 policy. 11 BY MR. SWANSON: 12 Q. Okay. 13 A. "The form of records and information 14 includes but is not limited to paper, electronic, 15 microfilm, microfiche, photograph, map, magnetic 16 or optical disk or tape, software or video, or 17 other recorded information." 18 Q. So that would include images? 19 A. I'm just checking the current -- the 5.0 20 version to see if that definition has changed. I 21 don't see a -- I checked the definition version of 22 4.0 and it appears to be similar. 23 Q. Okay. 24 A. I recognize that an x-ray is a media that 25 contains recorded information.</p>

<p style="text-align: right;">Page 316</p> <p>1 Q. This is an inclusive policy, because when 2 it says "any form of recorded information created, 3 maintained, or received by Johnson & Johnson," it 4 says those records and information include but are 5 not limited to. So this is an included -- this is 6 a very inclusive policy, correct, in terms of the 7 kinds of information that these cleanout days were 8 affecting?</p> <p>9 MR. COX: Object to the form.</p> <p>10 THE WITNESS: Yeah. I just note that 11 they -- that they inserted audiovisual material in 12 the later definition. Maybe some other changes, 13 too.</p> <p>14 BY MR. SWANSON:</p> <p>15 Q. But in Version 2.0, it said "microfilm, 16 microfiche, photographs," so that information was 17 included in there, too; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Did you consult with Johnson & Johnson on 20 any of the changes that went into these various 21 WWRIM policies?</p> <p>22 A. I have -- I believe in my notes from Karen 23 Skellington possibly there are some references to 24 some of the changes.</p> <p>25 Q. Let me ask a different question. Were any</p>	<p style="text-align: right;">Page 318</p> <p>1 Do you have that?</p> <p>2 Which is marked as Exhibit 29.</p> <p>3 And I think --</p> <p>4 A. I do see "revision histories."</p> <p>5 Q. And do you have the WWRIM policy Version 3 6 in front of you?</p> <p>7 A. Yes, I do.</p> <p>8 Q. And six pages in to that is a revision 9 history generally of this document; correct?</p> <p>10 A. Well, the -- the top document. The actual 11 policy document as opposed to the standards 12 underneath it, yes.</p> <p>13 Q. Now, what do you mean "as opposed to the 14 standards underneath it"? because the standards 15 underneath it include the RIMS 1 through how many 16 ever it goes to; correct?</p> <p>17 A. Well, RIMS -- RIMS 1 is actually the 18 standard and then prior to RIMS 1 -- and I'm 19 looking at the 3.0 version that we're talking 20 about -- there is a policy, call it a preamble, or 21 an introductory section which is denoted as the 22 worldwide records and information management 23 policy. And then the things beneath that are 24 known as -- are denoted as standards.</p> <p>25 Q. Okay. But so this -- but this history</p>
<p style="text-align: right;">Page 317</p> <p>1 of -- were you -- did you give input on any 2 changes that were made in these policies before 3 they were made, or at the time they were made?</p> <p>4 A. I did not.</p> <p>5 Q. Now, you mentioned Karen Skellington. You 6 talked to her about the changes in the WWRIM; is 7 that right?</p> <p>8 A. Some of the changes.</p> <p>9 Q. Where is that in your notes?</p> <p>10 A. Page 59 of your numbering.</p> <p>11 Q. Can you point me to it?</p> <p>12 A. Oh, sure. It's about 15 lines down.</p> <p>13 There's a line by itself. "WWRIM assigns every op 14 code," and below that it starts, "18 standards put 15 out in 2009, now '17. Other guidelines existed 16 pre2009. Karen came in, in 2008 and worked to 17 consolidate, remove cleanup standard." Moving -- 18 moving down the document of 5.0 is "current 19 version effective April '17." Some notes about 20 how the standards evolved, et cetera.</p> <p>21 Q. Now, each of these standards subsequent to 22 1.0 has a revision history; is that right? If you 23 look within the first few pages, for example, you 24 know, you go to 3 or 4, you take Version 3, for 25 example.</p>	<p style="text-align: right;">Page 319</p> <p>1 that's given on the policy, it includes changes -- 2 detail -- it's a -- would you agree that that's a 3 detailed accounting of what the changes were made 4 in terms of the language of the policy? If you 5 look at page 6 there again?</p> <p>6 A. Yeah. I'm looking at it and it appears to 7 be changes just made to these first few pages 8 which constitute the policy. Then, within that, 9 each standard also has its own change history.</p> <p>10 Q. And you see there in terms of this Version 11 3.0 of the WWRIM policy, it notes that the -- and 12 by this time, they were calling it the "cleanup 13 event," it says "retired RIMS 3."</p> <p>14 Do you see that?</p> <p>15 A. I'm sorry. What page are we on?</p> <p>16 Q. We're page 6 still. And this is the WWRIM 17 policy December 31, 2013.</p> <p>18 A. Yes, I see it.</p> <p>19 Q. And is -- is this an accurate accounting 20 of the changes that are made in the policy from 21 one to the next?</p> <p>22 MR. COX: Object to the form.</p> <p>23 THE WITNESS: Yes. Inasmuch as now the 24 standards jump from RIMS 2 to RIMS 4.</p> <p>25 BY MR. SWANSON:</p>

<p style="text-align: right;">Page 320</p> <p>1 Q. Okay. And the way that these histories 2 are written is that it's written with a lot of 3 detail; right? Going back to page 6, it says 4 "paragraph 2, removed sentence redundant tied with 5 paragraph 3." You know, above there it 6 says "where applicable change throughout 7 'employee' to 'associate.'"</p> <p>8 These are very specific references to 9 where the changes are being made, specifically 10 what changes are being made in the policies as we 11 get to subsequent versions; right?</p> <p>12 A. Yes.</p> <p>13 Q. So in theory, we should be able to take a 14 subsequent version like Version 3 and if we didn't 15 have 2 and 1, reconstitute, rewrite from it the 16 prior version; correct?</p> <p>17 MR. COX: Object to the form.</p> <p>18 THE WITNESS: It would depend on the 19 nature of the changes. To the extent that they -- 20 they were word level, you could back -- back your 21 way through it.</p> <p>22 In this case, there appear to be -- I 23 mean, there were references and sentences removed 24 that might make it difficult to reconstitute it 25 completely. But the -- you could create a rough</p>	<p style="text-align: right;">Page 322</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And it has a full history from Version 1.0 4 up to this current version stating what the 5 changes were; true?</p> <p>6 A. Yes.</p> <p>7 Q. And if you go to Version 5, which is 8 Exhibit 24, and you go to page, looks like 5 9 through 8 -- do you see that? -- is the revision 10 history?</p> <p>11 A. Yes.</p> <p>12 Q. And you see there were a lot of revisions 13 made from 4 to 5?</p> <p>14 A. Yes.</p> <p>15 Q. Is there a Version 6 or is this the latest 16 version, Number 5?</p> <p>17 A. Well, I noted that when I spoke to Karen 18 Skellington she said that 5.0 is the current 19 version and that that was effective in April of 20 2017 which is what is reflected in this document 21 (indicating).</p> <p>22 Q. Good. Now if we go to -- and you see the 23 changes are reflected for Number 4; right?</p> <p>24 A. Yes.</p> <p>25 Q. Now, if you go to Version Number 3 in its</p>
<p style="text-align: right;">Page 321</p> <p>1 facsimile of an earlier version.</p> <p>2 BY MR. SWANSON:</p> <p>3 Q. But it should -- it's supposed to be an 4 accurate accounting of what has been changed 5 version to version; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And that accounting includes, you know, 8 everything that's changed from the beginning to 9 the current version; correct?</p> <p>10 A. Yes.</p> <p>11 Q. And so if you go to -- this was Version 3. 12 And we saw in Version 3 there was a reference, 13 right, at page 6 to the cleanup event that was 14 specified under RIMS Standard 3 in a previous 15 version having been suspended or removed; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And, in fact, in this Version 3, it's -- 18 if you thumb through it, you can see that there is 19 no RIMS Standard 3; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And if you go to 4, Version 4, again, if 22 you go to the revision history, page 6, it has -- 23 again it states how -- the revision history in the 24 same sort of way that it did under Number 3 and it 25 includes that reference to the cleanup event;</p>	<p style="text-align: right;">Page 323</p> <p>1 version history, you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Where is the reference to cleanout event? 4 Or cleanup event in this history?</p> <p>5 A. I don't see it.</p> <p>6 Q. So if all we had in front of us was this 7 Version 5, we wouldn't know about the cleanout 8 event, would we?</p> <p>9 MR. COX: Object to the form.</p> <p>10 THE WITNESS: Well, we certainly wouldn't 11 know about it from the revision history pertaining 12 to 3.0.</p> <p>13 BY MR. SWANSON:</p> <p>14 Q. Well, is -- well, if I've got a current 15 version in front of me and I've got this history 16 that's supposed to be a faithful history of these 17 changes, I don't know about this history of a 18 cleanout event, do I?</p> <p>19 True?</p> <p>20 A. I don't see it in the history.</p> <p>21 Q. Okay. So -- so this is no longer an 22 accurate accounting -- the version history is no 23 longer an accurate accounting of the version 24 histories; true?</p> <p>25 MR. COX: Object to the form.</p>

<p style="text-align: right;">Page 324</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. You have in front of you, it's not in the</p> <p>3 version history; correct?</p> <p>4 A. Right. I'm just checking to -- to</p> <p>5 understand if the numbering of the standards is</p> <p>6 still as it was before, and the document does go</p> <p>7 from RIMS 2 to RIMS 4 with no RIMS 3. So there is</p> <p>8 an artifact in the sense that that RIMS 3 is still</p> <p>9 not represented.</p> <p>10 Q. Right. It's gone, because it was gone</p> <p>11 after Version 3 of the WWRIM; true?</p> <p>12 A. Yes.</p> <p>13 Q. And that's when -- and then the version</p> <p>14 history, though, in Number 3 and 4 accurately</p> <p>15 reflected that that section had been removed</p> <p>16 because that event was no longer in force;</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. And in Version 5 of the history, that</p> <p>20 disappears; right? It's not there; true?</p> <p>21 A. I don't see it.</p> <p>22 Q. Okay. So this version history has been</p> <p>23 changed and it no longer accurately reflects what</p> <p>24 happened; true?</p> <p>25 A. It no longer reflects the -- in that area</p>	<p style="text-align: right;">Page 326</p> <p>1 philosophy is now gone in Version 5; correct?</p> <p>2 A. I don't see it.</p> <p>3 Q. And that change in philosophy, do you have</p> <p>4 an understanding of what that change in philosophy</p> <p>5 was specifically?</p> <p>6 A. Simply as -- as is stated in the notes,</p> <p>7 "Associates shall independently manage their</p> <p>8 records and information during the normal course</p> <p>9 of business."</p> <p>10 Q. Okay. Now, you know that -- I'm going to</p> <p>11 switch gears a little here on you.</p> <p>12 You know that there's an issue of exposure</p> <p>13 in the Philippines in this case; correct?</p> <p>14 A. Yes.</p> <p>15 Q. In the Leavitt case. And of exposure in</p> <p>16 Hong Kong in the Fong case; true?</p> <p>17 A. Yes.</p> <p>18 Q. And that -- are you aware that the talc</p> <p>19 that was used for Johnson's Baby Powder that was</p> <p>20 manufactured or packaged at those locations came</p> <p>21 from Korea?</p> <p>22 A. I'm -- I have a general awareness of that.</p> <p>23 Q. Okay. Now, of the retention schedules --</p> <p>24 I want to get back into the retention schedules</p> <p>25 briefly here.</p>
<p style="text-align: right;">Page 325</p> <p>1 in the revision history no longer reflects the</p> <p>2 removal of the cleanout standard.</p> <p>3 Q. And do you know who made the decision to</p> <p>4 remove the reference to the cleanout days from the</p> <p>5 Version Number 5 WWRIM Johnson & Johnson worldwide</p> <p>6 policy?</p> <p>7 It's not in your notes, is it?</p> <p>8 A. I don't believe so.</p> <p>9 Q. I didn't see it there.</p> <p>10 A. I was just looking in my notes to</p> <p>11 understand who -- who would have been a point</p> <p>12 person at that point in time.</p> <p>13 Q. Did the lawyers make that decision?</p> <p>14 A. I don't know.</p> <p>15 Q. Did you see -- going back to Version</p> <p>16 Number 4 of the WWRIM policy, it says</p> <p>17 "Exhibit 23." If you go to Page Number 6.</p> <p>18 Do you have that in front of you?</p> <p>19 A. Yes.</p> <p>20 Q. It -- it states there that Johnson &</p> <p>21 Johnson -- in the reference to the cleanup event</p> <p>22 states that Johnson & Johnson has changed its</p> <p>23 philosophy on annual cleanups; right?</p> <p>24 A. Yes.</p> <p>25 Q. So that reference to a change in</p>	<p style="text-align: right;">Page 327</p> <p>1 What is the earliest retention schedule</p> <p>2 that has been produced to us that you're aware of</p> <p>3 that affects Johnson & Johnson Philippines,</p> <p>4 Johnson & Johnson Hong Kong, or the Asia Pacific?</p> <p>5 Well, let me -- let me ask a foundational question</p> <p>6 first.</p> <p>7 Are those -- I noticed there was some</p> <p>8 references in your notes to APAC, A-P-A-C. Does</p> <p>9 that sound familiar to you? And I assumed that</p> <p>10 that referred to Asian Pacific? Asia Pacific or</p> <p>11 something like that?</p> <p>12 A. I think -- I'd have to see it in context.</p> <p>13 Q. Let me see if I can find a reference.</p> <p>14 Oh, there's a reference here at page 3 of</p> <p>15 your notes.</p> <p>16 A. Your page 3?</p> <p>17 Q. Yes. Right. That's correct. This is</p> <p>18 again Exhibit 26.</p> <p>19 A. So this is Tom Doyle and Judy Dowling?</p> <p>20 Q. Yes. Do you see in the first paragraph</p> <p>21 there, there's a reference to APAC?</p> <p>22 A. Yes.</p> <p>23 Q. And without having you read through the</p> <p>24 rest of your notes right now, I'll just represent</p> <p>25 to you there are other references where you use</p>

<p style="text-align: right;">Page 328</p> <p>1 that acronym, APAC.</p> <p>2 What does that stand for?</p> <p>3 A. I believe it's Asia Pacific, but I don't</p> <p>4 recall --</p> <p>5 Q. Okay. Let's --</p> <p>6 A. -- confirming that.</p> <p>7 Q. Sorry. Didn't mean to cut you off.</p> <p>8 Can you turn to page 20. I see another</p> <p>9 reference to it.</p> <p>10 Do you see where you were speaking to an</p> <p>11 individual named Nicholas Zhu?</p> <p>12 A. Yes.</p> <p>13 Q. And it says "responsible for APAC." Then</p> <p>14 it says "Thailand, China, Philippines," et cetera;</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. So do you believe that refers something to</p> <p>18 Asia Pacific; correct?</p> <p>19 A. Yes.</p> <p>20 Q. So let me ask you questions broadly about</p> <p>21 any retention schedules or policies that would</p> <p>22 have impacted -- been in effect in the</p> <p>23 Philippines, in Hong Kong. Let's start with those</p> <p>24 two and we'll probably include China, but that</p> <p>25 might be more recent.</p>	<p style="text-align: right;">Page 330</p> <p>1 Q. Do you know if any of the records</p> <p>2 retention schedules that Johnson & Johnson has</p> <p>3 apply to Johnson & Johnson Philippines?</p> <p>4 A. I would have to look at the scope of each</p> <p>5 one. I don't know offhand.</p> <p>6 Q. But there's nothing in this 1997 guideline</p> <p>7 for records retention schedule that tells you what</p> <p>8 applies broadly to all of their operating</p> <p>9 companies; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And I don't want you to guess, but would</p> <p>12 you agree with me that the natural inference</p> <p>13 looking at this is that it did not apply; correct?</p> <p>14 MR. COX: Object to the form.</p> <p>15 BY MR. SWANSON:</p> <p>16 Q. Since it says Johnson & Johnson Consumer</p> <p>17 Products Companies. I don't want you to</p> <p>18 speculate. So. Okay.</p> <p>19 And you can't tell me right now what the</p> <p>20 first year is that there is a retention policy</p> <p>21 that applies to the Philippines, to J&J China, or</p> <p>22 J&J Hong Kong; true?</p> <p>23 A. You know, I have a general knowledge from</p> <p>24 talking to people at the company that there were</p> <p>25 retention practices. I can't speak to the</p>
<p style="text-align: right;">Page 329</p> <p>1 But so -- and Korea.</p> <p>2 What was the first retention policies that</p> <p>3 would have been in effect and controlled retention</p> <p>4 of documents -- retention and disposition of</p> <p>5 documents at Johnson & Johnson Philippines?</p> <p>6 A. I don't know the year that that would have</p> <p>7 been applicable, the first year.</p> <p>8 Q. Do you -- was the 1997 policy, which is</p> <p>9 the first policy that has been produced to us, the</p> <p>10 oldest policy and the oldest one that you've seen,</p> <p>11 according to your testimony, did that apply to</p> <p>12 Johnson & Johnson Philippines?</p> <p>13 A. I would have to confirm that.</p> <p>14 Q. Okay. And before you go about -- and does</p> <p>15 the policy itself say whether or not it affects</p> <p>16 it, whether or not that policy is the policy for</p> <p>17 the Philippines or the Asia Pacific, or whether</p> <p>18 it's just domestic?</p> <p>19 A. Yeah. The document itself does not have a</p> <p>20 scope associated with it.</p> <p>21 Q. So you don't -- you don't know whether or</p> <p>22 not this records retention guideline schedule</p> <p>23 applied to Asia Pacific, to Hong Kong, or the</p> <p>24 Philippines; correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 331</p> <p>1 specific schedules that apply.</p> <p>2 Q. And we'll get into that in a minute.</p> <p>3 So you're not sure if any of the retention</p> <p>4 schedules apply, and if you have, you know,</p> <p>5 information about that even after the break as to</p> <p>6 whether these did or not, we can revisit it.</p> <p>7 Now, when you say you have information</p> <p>8 generally about retention practices, is this</p> <p>9 something that's reflected in your notes?</p> <p>10 A. Yes.</p> <p>11 Q. And these are retention practices at which</p> <p>12 locations?</p> <p>13 A. It was not location-specific. It was</p> <p>14 simply an indication of how long certain materials</p> <p>15 were held.</p> <p>16 Q. By whom? In other words, which operating</p> <p>17 company are we talking about now? because I'm</p> <p>18 obviously interested in asking right now, but just</p> <p>19 about the Philippines, Hong Kong, China, Korea.</p> <p>20 A. I would need to reference a couple of</p> <p>21 pieces of my notes here.</p> <p>22 Q. I don't know what page you're at, but if</p> <p>23 you look at pages 20 and 21, there are references</p> <p>24 to overseas operations. I don't know if that --</p> <p>25 any of that helps you.</p>

<p style="text-align: right;">Page 332</p> <p>1 A. Yes. And I was looking at Don Hicks who</p> <p>2 indicated that in 2009, a global specification was</p> <p>3 created. I'm jumping now to page 20.</p> <p>4 Q. Okay. Page 20. This is Don Hicks?</p> <p>5 A. Well, this is now Nicholas Zhu --</p> <p>6 Q. Wait. Let's go -- since you are the one</p> <p>7 who raised the reference to Don Hicks --</p> <p>8 A. Okay.</p> <p>9 Q. -- what page of that, that were you</p> <p>10 looking at specifically?</p> <p>11 A. Oh, that was -- just lost it. Page 13.</p> <p>12 Q. Okay. This is talking about a global talc</p> <p>13 spec created in 2009; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I'm asking about retention</p> <p>16 policies.</p> <p>17 A. Okay.</p> <p>18 Q. So if you can locate the place in your</p> <p>19 notes, if you have -- you haven't been specific as</p> <p>20 to the Philippines or Hong Kong or Asia Pacific or</p> <p>21 Korea, remember, my query is directed to finding</p> <p>22 out what retention schedules; policies with</p> <p>23 respect to retaining documents; destroying,</p> <p>24 disposing of documents, as to those areas. That's</p> <p>25 what I'm looking for.</p>	<p style="text-align: right;">Page 334</p> <p>1 Kong?</p> <p>2 A. Well, I spoke to -- this is on page 42. I</p> <p>3 have a reference to a conversation with Uday</p> <p>4 Sharan who was a sourcing manager who was based in</p> <p>5 the -- in that region, and he was specifically</p> <p>6 talking about Thailand, but he indicated that</p> <p>7 the -- from his perspective, they kept documents</p> <p>8 for -- and he was talking about the manufacturing</p> <p>9 records, that the retention on those was five</p> <p>10 years. I don't -- I have not yet found other</p> <p>11 references to any retention schedules for those</p> <p>12 particular regions.</p> <p>13 Q. Now, you knew coming in to this deposition</p> <p>14 as -- you knew -- you knew that your assignment</p> <p>15 here, part of it, was to talk about retention</p> <p>16 schedules; right?</p> <p>17 A. Yes.</p> <p>18 Q. And so as a representative for Johnson &</p> <p>19 Johnson sitting here today, knowing that this was</p> <p>20 part of the assignment and knowing that these</p> <p>21 areas of the world and their retention policies</p> <p>22 were relevant to the case, you don't have any</p> <p>23 information to provide today; correct?</p> <p>24 MR. COX: Object to the characterization.</p> <p>25 Object to the form of the question.</p>
<p style="text-align: right;">Page 333</p> <p>1 A. Right. Okay.</p> <p>2 Q. And if you find information that, that you</p> <p>3 have as a representative of Johnson & Johnson,</p> <p>4 tell me.</p> <p>5 MR. SWANSON: While he's doing that, let's</p> <p>6 go off the transcript record briefly, and I'm</p> <p>7 going to go check on something and you keep</p> <p>8 looking.</p> <p>9 MR. COX: Let's go off the record</p> <p>10 entirely.</p> <p>11 MR. SWANSON: What's that?</p> <p>12 MR. COX: Let's go off the video record,</p> <p>13 too.</p> <p>14 MR. SWANSON: Why? I mean, I'm going to</p> <p>15 be back in two seconds. I mean, we don't need to</p> <p>16 do that whole thing of getting off it. I'll be</p> <p>17 back in two seconds. I want him to have time to</p> <p>18 look through that.</p> <p>19 (Off the stenographic record.)</p> <p>20 MR. SWANSON: Back on the record.</p> <p>21 BY MR. SWANSON:</p> <p>22 Q. Have you located some information about</p> <p>23 retention policies or retention guidelines that</p> <p>24 would have been in effect -- or practices in</p> <p>25 effect in the Philippines, Korea, China, or Hong</p>	<p style="text-align: right;">Page 335</p> <p>1 THE WITNESS: What I do know is that there</p> <p>2 were retention schedules in those regions, the</p> <p>3 retention practices and/or schedules; that there</p> <p>4 was information saved for periods of time. For</p> <p>5 example, Don Hicks indicated that the -- and Uday</p> <p>6 indicated that those materials were saved five</p> <p>7 years plus one, six years.</p> <p>8 I have an understanding that information</p> <p>9 in those regions that was stored in the United</p> <p>10 States was subject to the retention schedules that</p> <p>11 we've already discussed.</p> <p>12 I have also the understanding that</p> <p>13 those -- there are physical files in those regions</p> <p>14 of the world that were consulted and searched for</p> <p>15 materials, and that there were materials that were</p> <p>16 stored off site there were consulted.</p> <p>17 I don't have the particular retention</p> <p>18 schedule that they were responsive to, but I</p> <p>19 understand that there was a practice for</p> <p>20 maintaining information in those regions.</p> <p>21 BY MR. SWANSON:</p> <p>22 Q. Specifically as to the Philippines, do you</p> <p>23 know if there's ever been a formal retention</p> <p>24 schedule for documents archived, retained, kept,</p> <p>25 generated at J&J Philippines?</p>

<p style="text-align: right;">Page 336</p> <p>1 A. I don't know at this moment.</p> <p>2 Q. And do you know if there has ever been a</p> <p>3 formal policy for J&J Hong Kong for the retention,</p> <p>4 archiving of documents?</p> <p>5 A. I would -- once again, I don't know, and</p> <p>6 it may be that the schedules I have apply to --</p> <p>7 the current schedules apply to that time period.</p> <p>8 I just don't know.</p> <p>9 Q. I understand.</p> <p>10 A. I'm sorry, applied to that --</p> <p>11 Q. You say maybe.</p> <p>12 A. I --</p> <p>13 Q. You say maybe --</p> <p>14 A. Let me correct what I said. Not applied</p> <p>15 to that time period. Applied to that region. I</p> <p>16 misspoke.</p> <p>17 Q. Now, just briefly, this reference you made</p> <p>18 to Uday Sharan, that's for Thailand; right?</p> <p>19 A. Yes.</p> <p>20 Q. He's not talking about the Philippines.</p> <p>21 A. I understand that.</p> <p>22 Q. Right. And he's not talking about Hong</p> <p>23 Kong; correct? And -- right?</p> <p>24 A. Correct.</p> <p>25 Q. And the source of that talc was European</p>	<p style="text-align: right;">Page 338</p> <p>1 Q. Good afternoon, Mr. Mittenenthal. We're</p> <p>2 back on the record after the lunch break.</p> <p>3 A. Good afternoon.</p> <p>4 Q. I was asking you about retention policies,</p> <p>5 schedules, procedures that apply to the Asia</p> <p>6 Pacific or to the Philippines, Hong Kong, China,</p> <p>7 and I'd asked you about the policies that have</p> <p>8 been produced in this case going back to 1997 and</p> <p>9 you weren't sure which of any of those policies</p> <p>10 applied to J&J's operating companies in those</p> <p>11 regions and countries; correct?</p> <p>12 A. Correct.</p> <p>13 Q. Have you -- have you looked at any of</p> <p>14 those policies since we were discussing that</p> <p>15 earlier?</p> <p>16 A. I've determined that I will -- I'm not</p> <p>17 able to ascertain based on what I have at my</p> <p>18 disposal right now.</p> <p>19 Q. And, based on your conversations with</p> <p>20 various folks that are reflected in your notes or</p> <p>21 any subsequent conversations you have, other than</p> <p>22 what we've already discussed, you're not -- well,</p> <p>23 strike that.</p> <p>24 We've discussed what you had in your notes</p> <p>25 with respect to any retentions over -- overseas;</p>
<p style="text-align: right;">Page 337</p> <p>1 talc, correct, not Korean talc?</p> <p>2 A. He was speaking to the retention of</p> <p>3 materials in Thailand, and I drew from my</p> <p>4 understanding of my conversation with him that</p> <p>5 those materials, there were retention practices in</p> <p>6 that area and in the Asia Pacific region.</p> <p>7 MR. SWANSON: Move to strike.</p> <p>8 Nonresponsive.</p> <p>9 I think that's a good time to break for</p> <p>10 lunch.</p> <p>11 Let's go off the record.</p> <p>12 THE VIDEOGRAPHER: Off the record.</p> <p>13 Time is now 12:52 p.m.</p> <p>14 (Lunch break taken.)</p> <p>15 THE VIDEOGRAPHER: On the record at</p> <p>16 1:55 p.m. Counsel, you may continue.</p> <p>17 MR. CARPENTER: Counsel, can I make that</p> <p>18 quick --</p> <p>19 MR. SWANSON: Sure.</p> <p>20 MR. CARPENTER: This is Erin Carpenter. I</p> <p>21 failed earlier when I was putting my appearance on</p> <p>22 the record to also indicate that I am here -- I'm</p> <p>23 specially appearing on behalf of Imerys U.S.A.,</p> <p>24 Inc. That's it. Thank you.</p> <p>25 BY MR. SWANSON:</p>	<p style="text-align: right;">Page 339</p> <p>1 correct?</p> <p>2 A. Generally, yes.</p> <p>3 Q. And you're not -- then just to kind of</p> <p>4 close the loop, you're not aware of what, if any,</p> <p>5 retention policies were in effect at the J&J</p> <p>6 Philippines; correct?</p> <p>7 A. Correct.</p> <p>8 Q. And you're not aware of any retention</p> <p>9 schedule that was in effect at J&J Hong Kong;</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. Are you familiar with worldwide talc</p> <p>13 surveys? Did you hear anything about that?</p> <p>14 A. I have an understanding of that, yes.</p> <p>15 Q. Other than the survey documents themselves</p> <p>16 that were produced -- and there were a few of</p> <p>17 those produced -- do you have any information</p> <p>18 about retention for documents related to Korean</p> <p>19 talc that was used in Johnson's Baby Powder in</p> <p>20 Hong Kong and the Philippines?</p> <p>21 A. I don't, no.</p> <p>22 Q. What is the current retention schedule</p> <p>23 for -- and this may include different types of</p> <p>24 documents, but for documents related to the</p> <p>25 testing of talc for mineral contaminants like</p>

<p style="text-align: right;">Page 340</p> <p>1 asbestos?</p> <p>2 A. Well, I would have to consult the -- the</p> <p>3 schedule.</p> <p>4 Q. Why don't you go ahead and do that. In</p> <p>5 fact -- well, before you consult the schedule,</p> <p>6 because obviously I want to be -- I want us to be</p> <p>7 as efficient as we can be with our time -- have</p> <p>8 you seen something in the retention schedules that</p> <p>9 you believe applies to analytical testing reports</p> <p>10 that would be reports or, for example, the actual</p> <p>11 films or digital images from microscopy or the</p> <p>12 images or charts that would come from, I think,</p> <p>13 EDS or, you know, spectrographs, that sort of</p> <p>14 thing?</p> <p>15 A. I don't recall with specificity. I have</p> <p>16 seen in the departmental schedules references to</p> <p>17 testing. I've seen references to testing in</p> <p>18 supplier agreements and I've seen references to</p> <p>19 testing in legal hold notices.</p> <p>20 Q. Would you know where to look in the</p> <p>21 retention policies for something like that? Would</p> <p>22 it be under R&D?</p> <p>23 A. Well, I -- because the schedules are</p> <p>24 departmental in scope, I would look under R&D. I</p> <p>25 would look under manufacturing. I might look</p>	<p style="text-align: right;">Page 342</p> <p>1 I'm looking under -- I'm now up to</p> <p>2 "quality," page 221. And I see an entry called</p> <p>3 "analytical chemistry testing finished product</p> <p>4 devices."</p> <p>5 Q. I'm sorry. Where is that again?</p> <p>6 A. The top of 221. Once again, I don't know.</p> <p>7 I'm not an expert on the testing process. I don't</p> <p>8 know if that applies. I'm just looking for places</p> <p>9 where the word "testing" appears in relevant</p> <p>10 categories.</p> <p>11 Q. And what's the minimum retention for --</p> <p>12 well, first of all, let's go back, and I should</p> <p>13 have asked you as you were going here. We talked</p> <p>14 about material analyst analysis reports.</p> <p>15 What's the minimum retention for those as</p> <p>16 of 1997?</p> <p>17 A. I think that was LP, if I remember</p> <p>18 correctly. That was page 188.</p> <p>19 Q. 190.</p> <p>20 A. Oh, I was on 188. Yeah, 190. LP plus 6.</p> <p>21 Q. What does that mean?</p> <p>22 A. Life of the product. In other words, the</p> <p>23 expected life of the product in the marketplace</p> <p>24 plus six years.</p> <p>25 Q. Does that mean like shelf life?</p>
<p style="text-align: right;">Page 341</p> <p>1 under quality. There's a couple places where I</p> <p>2 might look.</p> <p>3 Q. Okay. I'd like to find out what the</p> <p>4 retention on these testing documents was as of</p> <p>5 1997. And then if we need to talk about it</p> <p>6 currently, I want to know what the retention on</p> <p>7 that would be. And to be clear, what I'm looking</p> <p>8 for is testing-related documents on both finished</p> <p>9 product and on the cosmetic talc products and also</p> <p>10 on talc ore. And milled -- milled ore also, just</p> <p>11 to be clear.</p> <p>12 I don't know if this helps you. But at</p> <p>13 page 190 of the 1997 policy, there's a reference</p> <p>14 to manufacturing and material analyst reports. I</p> <p>15 mean...</p> <p>16 A. Yeah. I just about caught up to you, I</p> <p>17 was on 188.</p> <p>18 Q. Okay.</p> <p>19 A. I mean, I'm not an expert on the testing</p> <p>20 process. I see -- I'm just looking for the</p> <p>21 word "test."</p> <p>22 I see, for instance, test cases on 188. I</p> <p>23 don't know if that applies or not. I'm going</p> <p>24 to -- I guess from there, I see material analysis</p> <p>25 reports as you mentioned.</p>	<p style="text-align: right;">Page 343</p> <p>1 A. I don't know if it equates to shelf life.</p> <p>2 It may.</p> <p>3 Q. What else would it equate or would it</p> <p>4 reference life of the product as in its baby</p> <p>5 powder, and baby powder is going to continue to be</p> <p>6 around, so essentially it would always be under</p> <p>7 retention. See what I'm saying?</p> <p>8 A. Actually, I don't. I'm sorry.</p> <p>9 Q. Well, life of the product. I mean,</p> <p>10 there's a life of a product, the period of time</p> <p>11 during which a company manufactures a given</p> <p>12 product; right?</p> <p>13 A. Oh, yes.</p> <p>14 Q. You know, under various specifications or</p> <p>15 particular specification and it's a product like</p> <p>16 Johnson's Baby Powder. I mean, that could be</p> <p>17 called "life of the product"; right?</p> <p>18 A. Yes. You're right.</p> <p>19 Q. But life of product here under "material</p> <p>20 analyst reports," you're not sure what that means</p> <p>21 in that context? I mean, is that shelf life? Is</p> <p>22 it something more than shelf life? Is it, you</p> <p>23 know, how long they've been -- they are going to</p> <p>24 manufacture Johnson's Baby Powder?</p> <p>25 A. Yes. And I -- you know, I don't think I</p>

<p style="text-align: right;">Page 344</p> <p>1 want to interpret that without a little bit more 2 research.</p> <p>3 Q. So I know there's a lot of questions here 4 today. But you were aware that these were central 5 issues about testing in these cases, right, in 6 talc testing, correct?</p> <p>7 MR. COX: Object to the form of the 8 question. Object to the characterization that 9 this is a central issue or that a lot of the 10 questions today regard central issues in the 11 deposition notice or this case -- these cases.</p> <p>12 THE WITNESS: I was aware that the -- one 13 of the noticed topics had to do with retention.</p> <p>14 BY MR. SWANSON:</p> <p>15 Q. And you also, though, know that in these 16 cases, even though you're not an expert on 17 testing, that testing and test results and the 18 retention of those testing is an important issue 19 to these cases; correct? The talc testing I'm 20 referring to.</p> <p>21 A. Well, I wouldn't want to give an opinion, 22 but I understand that it has been raised as an 23 issue.</p> <p>24 Q. So. And you understood that as a 25 spokesperson for Johnson & Johnson, you were to be</p>	<p style="text-align: right;">Page 346</p> <p>1 Q. On page 221. What does that refer to?</p> <p>2 A. I can only speak to it's -- it's plain 3 English. I don't -- I'm not here to interpret 4 what that means.</p> <p>5 Q. I don't want to waste time going through 6 each of the policies like this.</p> <p>7 Are you prepared, as you sit here today, 8 to talk about specifically what the retention 9 schedule is and the retention period for testing 10 reports?</p> <p>11 A. Well, as I mentioned, I'm not specifically 12 able to sit here and say LP is identical to shelf 13 life or make that assessment. What I can say is 14 that I -- in addition to gathering the schedules, 15 I interviewed people. I spoke to, for instance, 16 Don Hicks, and Mr. Hicks gave a -- an appraisal 17 that -- of testing, quality testing for talc that 18 it was used in conjunction with the manufacturing 19 process, that it's -- retention of those materials 20 is tied to the expected shelf life of the product. 21 Now, it may be the shelf life of the product plus 22 a year; it may be double the shelf life of the 23 product. It has changed over time, but I have a 24 general understanding from Mr. Hicks that testing 25 materials are generally held at least the expected</p>
<p style="text-align: right;">Page 345</p> <p>1 prepared to speak on these issues, correct, 2 because we've asked about them?</p> <p>3 MR. COX: Object to the form.</p> <p>4 THE WITNESS: I understand that the 5 retention of documentation is a topic and that I 6 am prepared to speak on that.</p> <p>7 BY MR. SWANSON:</p> <p>8 Q. Okay. But, as you sit here right now, 9 you're not prepared to tell me what in 1997 life 10 of the product meant as to these material analyst 11 reports; correct?</p> <p>12 A. That's right.</p> <p>13 Q. Can you point -- and if we go to -- I 14 think you referenced 221 of this 1997 retention 15 schedule, "analytical chemistry testing finished 16 product devices"?</p> <p>17 A. Yes. And, once again, I'm not an expert. 18 I don't know if that even applies, but I noted the 19 word "testing" was -- was in there.</p> <p>20 Q. Okay. But you don't even know if that 21 applies to talc, do you?</p> <p>22 A. Correct.</p> <p>23 Q. Going three down, you see where it says 24 "analytical reports and requests"?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 347</p> <p>1 shelf life of the product plus some additional 2 amount of time.</p> <p>3 Q. And how long is the shelf life of 4 Johnson's Baby Powder?</p> <p>5 A. Well, I'm going to just refer to my 6 discussion with Mr. Hicks. And that's at the top 7 of -- I'm sorry. I'm on the marked copy. Let me 8 pull that out. I can find it. Here it is. So 9 now I'm looking at page 12. And the third, 10 fourth, fifth lines down. "Testing" -- "test, 11 manufacturing, inventory, shipping records tend to 12 be kept for a shorter period per schedule times to 13 when the product would be in the marketplace, 14 generally about six years."</p> <p>15 Q. Okay. So that's not quite shelf life, 16 then. That's something longer than shelf life?</p> <p>17 A. Once again, I -- I'm not an expert in 18 interpreting what shelf life is or how long the 19 product would be in the marketplace. I'm just -- 20 I basically tried to gather that information from 21 Mr. Hicks as best as I could.</p> <p>22 Q. If you look at page 37 of your notes.</p> <p>23 A. Yes.</p> <p>24 Q. And this was from your discussion with 25 Rosina Bruno-Sheerin.</p>

<p style="text-align: right;">Page 348</p> <p>1 A. Yes.</p> <p>2 Q. Well, first of all, before I get there,</p> <p>3 and I apologize. Don Hicks, those records --</p> <p>4 testing, manufacturing -- what kind of testing are</p> <p>5 we talking about and where?</p> <p>6 A. I interpreted his comment to be those</p> <p>7 testing records that accompany batches or lots in</p> <p>8 the manufacturing process, such as certificates of</p> <p>9 analysis.</p> <p>10 Q. And those certificates of analysis, were</p> <p>11 those something that were being generated by</p> <p>12 Johnson & Johnson or that came with the talc that</p> <p>13 came in?</p> <p>14 MR. COX: Object to the form.</p> <p>15 BY MR. SWANSON:</p> <p>16 Q. Let me -- let me start that over again.</p> <p>17 What was included in the certificate of analysis?</p> <p>18 Did that include whether or not -- was there --</p> <p>19 did that include a test for asbestos?</p> <p>20 A. I'm not an expert on the testing process.</p> <p>21 I have a general understanding that there were --</p> <p>22 there was testing done for asbestos. The best</p> <p>23 summary of the testing records I have is from Mark</p> <p>24 Zappa on page 19.</p> <p>25 Q. But specifically what were they testing?</p>	<p style="text-align: right;">Page 350</p> <p>1 transferred. There is testing that is done by</p> <p>2 Imerys itself. And then another C of A is</p> <p>3 created. I mean, I'm just basically reading from</p> <p>4 it. But then from Imerys to Pharma Tech, there</p> <p>5 are C of As sent and then additional testing done.</p> <p>6 Q. Okay.</p> <p>7 A. So there's -- that's kind of the flow of</p> <p>8 testing documentation.</p> <p>9 Q. And so the mine -- and that would be prior</p> <p>10 to -- well, that would be the Vermont mines;</p> <p>11 right?</p> <p>12 MR. COX: Object to the form.</p> <p>13 THE WITNESS: Yeah. Once again, I mean,</p> <p>14 I'm not...</p> <p>15 MR. CARPENTER: I'll join in that last</p> <p>16 objection. Also state lacks foundation.</p> <p>17 BY MR. SWANSON:</p> <p>18 Q. I'm sorry?</p> <p>19 A. Yeah, I'm just going to say, I'm not an</p> <p>20 expert on which mines were in use at which point.</p> <p>21 Q. So this certificate -- now, the mine did</p> <p>22 its own testing. It says that; right?</p> <p>23 Now, Johnson & Johnson would get that</p> <p>24 certificate of analysis regarding that testing; is</p> <p>25 that right?</p>
<p style="text-align: right;">Page 349</p> <p>1 Now, Don Hicks was at the North Brunswick</p> <p>2 location, the manufacturing location; is that</p> <p>3 right?</p> <p>4 A. I know he had various responsibilities.</p> <p>5 He was at one point in North Brunswick. I really</p> <p>6 don't know. I think he was at various locations.</p> <p>7 But he had -- you know, in the -- during the</p> <p>8 2000s, he had a responsibility for quality issues</p> <p>9 related to talc manufacturing.</p> <p>10 Q. So the records he was referring -- those</p> <p>11 testing records, you think it includes</p> <p>12 certificates of analysis?</p> <p>13 A. Well, this is where I come to the</p> <p>14 follow-on conversation with Mr. Zappa on page 19.</p> <p>15 Q. Okay. You said 19?</p> <p>16 A. Yes.</p> <p>17 Q. All right.</p> <p>18 A. And this is under "follow-up."</p> <p>19 Q. Got it.</p> <p>20 A. And in this conversation, I sought to</p> <p>21 determine the flow of documentation through the --</p> <p>22 through the life cycle so that there is testing</p> <p>23 done at the mine level. There is testing done</p> <p>24 when the -- when the material goes to Imerys,</p> <p>25 there is a -- the certificate of analysis is</p>	<p style="text-align: right;">Page 351</p> <p>1 A. Well --</p> <p>2 MR. COX: Object to the form. Beyond the</p> <p>3 scope of the notice.</p> <p>4 Go ahead.</p> <p>5 THE WITNESS: Just going through the</p> <p>6 workflow that Mr. Zappa established, the mine</p> <p>7 would create a C of A which then is forwarded.</p> <p>8 BY MR. SWANSON:</p> <p>9 Q. Let me try to cut to the chase on this</p> <p>10 stuff.</p> <p>11 Is it true that you don't know</p> <p>12 specifically whether these tests that are</p> <p>13 reflected there were tests for asbestos content?</p> <p>14 A. My general understanding is that the --</p> <p>15 the tests did involve asbestos testing. The</p> <p>16 appearance and odor and fineness testing may not</p> <p>17 have included asbestos testing, but the -- my</p> <p>18 general understanding -- and once again, I'm not</p> <p>19 here to speak on anything but my general</p> <p>20 understanding of the testing process, but those --</p> <p>21 those initial tests did include asbestos testing.</p> <p>22 Q. And what was the retention on those; do</p> <p>23 you know?</p> <p>24 A. Well, that goes back to -- to Mr. Hicks's</p> <p>25 comment to the applicable items in the retention</p>

<p style="text-align: right;">Page 352</p> <p>1 schedule. But it's going to be associated with</p> <p>2 the batch and lot six to seven years, and then</p> <p>3 there would also be a notation on that in the</p> <p>4 supplier agreement with PTI as to the retention</p> <p>5 period there.</p> <p>6 Q. Now, if you go to page 37 -- this is</p> <p>7 Rosina Bruno-Sheerin.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. The second page of the notes about what</p> <p>11 she told you. It refers to R&D records being kept</p> <p>12 long-term.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. "Permanent or life of the product plus N</p> <p>16 years"?</p> <p>17 A. Yes.</p> <p>18 Q. What does "life of product" mean in that</p> <p>19 context?</p> <p>20 A. It would appear she was talking about how</p> <p>21 long the product was being made.</p> <p>22 MR. SWANSON: I'm sorry, can I have that</p> <p>23 read back, please.</p> <p>24 (Record read by the court reporter.)</p> <p>25 BY MR. SWANSON:</p>	<p style="text-align: right;">Page 354</p> <p>1 about what material analysis reports are to</p> <p>2 determine if they are associated with a batch or</p> <p>3 if there's some other type of -- I mean, I'm</p> <p>4 reading the text below it, and I see that they --</p> <p>5 they talk about DMR and DHR; device master record,</p> <p>6 device history record. Based on that, I'm not</p> <p>7 sure that this section applies to lots of batches.</p> <p>8 I just don't know what material analysis reports</p> <p>9 are.</p> <p>10 BY MR. SWANSON:</p> <p>11 Q. Right. So, I mean, this kind of runs up</p> <p>12 against the problem I raised earlier, which is</p> <p>13 that you're here to speak on behalf of Johnson &</p> <p>14 Johnson. I'm trying to get this information from</p> <p>15 you and it seems to me like we're kind of guessing</p> <p>16 about what the proper retention schedule was. I</p> <p>17 mean, if Don Hicks told you it was shelf life plus</p> <p>18 6 years in manufacturing but it was actually</p> <p>19 something different and required to be different,</p> <p>20 that's something we want to know about, and I</p> <p>21 can't get from you what the formal policies were</p> <p>22 with respect to retention of testing results</p> <p>23 and -- and not only testing results but the</p> <p>24 testing documents themselves: things like TEM</p> <p>25 images, x-ray diffraction, EDSs, that sort of</p>
<p style="text-align: right;">Page 353</p> <p>1 Q. So if she's referring to how long the</p> <p>2 product is being made, in other words, like</p> <p>3 Johnson's Baby Powder?</p> <p>4 A. Yes.</p> <p>5 Q. Not shelf life or anything like that;</p> <p>6 right?</p> <p>7 A. Well, based on her comment about</p> <p>8 "permanent," I would say no.</p> <p>9 Q. So but in the context of the retention</p> <p>10 schedule we looked at, we were -- we saw life of</p> <p>11 product plus 6, correct, for testing, that the</p> <p>12 manufacturing material analyst -- analysis</p> <p>13 reports?</p> <p>14 Do you see that?</p> <p>15 A. Yes, I did. That's on 190.</p> <p>16 Q. So wouldn't that indicate that -- that</p> <p>17 what Don Hicks told you, doesn't that indicate</p> <p>18 they weren't at that facility following the</p> <p>19 retention policy, he said, shelf life plus</p> <p>20 6 years, that's what that meant?</p> <p>21 MR. COX: Object -- object to the form of</p> <p>22 the question.</p> <p>23 THE WITNESS: Well, I believe you had</p> <p>24 guided me to the material analysis reports, that</p> <p>25 section, and I don't know -- I don't know enough</p>	<p style="text-align: right;">Page 355</p> <p>1 thing.</p> <p>2 So who is it we should be talking to, to</p> <p>3 get this information about what Johnson &</p> <p>4 Johnson's policies are and have been with respect</p> <p>5 to retention of testing records?</p> <p>6 MR. COX: Object to the form of the</p> <p>7 question. Object to the extent that this line of</p> <p>8 questioning goes beyond the scope of the notice</p> <p>9 insofar as you're asking Mr. Mittenthal to give</p> <p>10 testimony about testing. He's not the corporate</p> <p>11 representative regarding different types of</p> <p>12 testing that was done by Johnson & Johnson or</p> <p>13 Johnson & Johnson Consumer, Inc.</p> <p>14 MR. SWANSON: Counsel, what I'm trying to</p> <p>15 get at is -- I'm trying to get at what the</p> <p>16 retention schedules were and how long documents</p> <p>17 were supposed to be kept and whether or not there</p> <p>18 was an actual retention schedule as to any kind of</p> <p>19 testing reports to do with talc or milled talc,</p> <p>20 finished cosmetic talc products. And that's what</p> <p>21 is at issue in this case.</p> <p>22 BY MR. SWANSON:</p> <p>23 Q. And so, Mr. Mittenthal, let me ask you</p> <p>24 again, who is it that I should be talking to, to</p> <p>25 find this out?</p>

<p style="text-align: right;">Page 356</p> <p>1 A. Well, I learned it from Don Hicks and from 2 others in my notes. I did not go out and take 3 every interval described by Mr. Hicks and tie it 4 back to every version of a retention schedule. 5 I -- it would certainly be something that could be 6 done. I did not do that step as part of my 7 preparation. I did not view it as within my scope 8 of preparation. There -- the -- I would expect 9 that the retention schedules would be reflective 10 of the comments that Mr. Hicks and others made to 11 me. 12 MR. SWANSON: Move to strike that last 13 sentence as being speculative. 14 BY MR. SWANSON: 15 Q. Does Johnson & Johnson have a formal 16 retention policy as to retention of talc? And 17 when I say "talc," I mean milled and talc ore 18 testing results today? 19 A. Yes. My understanding is that it does, 20 and I would look to the schedules, I would look to 21 the supplier agreements to determine that. 22 Q. But you can't tell us what those retention 23 periods are; correct? 24 A. Well, we were looking at the '97 schedule. 25 I believe I can find it in the quality agreement.</p>	<p style="text-align: right;">Page 358</p> <p>1 and tests?" 2 A. 17.0. "Records." Under the first quality 3 system procedure which is Exhibit 2D. 4 Q. Okay. I think I've got it. Yeah. 5 So what does that say about retention of 6 testing results? 7 A. It says, "All documentation, including 8 manufacturing records, packaging records, 9 inspection records, QA records, batch tickets, 10 cards records, et cetera, during the manufacturing 11 process shall be maintained by PTI for six years 12 from the date of manufacture." 13 Then it goes on to say, "The validation 14 records are to be kept by PTI as long as the 15 product is manufactured until the last batch of 16 any discontinued product has expired." 17 Q. Just to be clear for the record, Pharma 18 Tech Industries, PTI, was -- did the packaging of 19 the manufacturing powder -- packaging of Johnson's 20 Baby Powder for Johnson & Johnson; is that right? 21 A. That's my understanding. 22 Q. And where it says "records," and it says 23 "six years," I notice "manufacturing records, 24 packaging." Does it list testing? 25 A. It doesn't say testing per se, but it</p>
<p style="text-align: right;">Page 357</p> <p>1 Q. Okay. And where -- can you point me to 2 the quality agreement? 3 A. So this is Exhibit 1. The quality 4 agreements are provided under Tab 2D. 5 So I have -- on the first quality system, 6 there's two different sets of numbers. The top 7 says "9 of 16"; the lower one says "11 of 19." 8 Q. Can you direct me to where you're at 9 specifically? 10 A. Yeah. 11 Q. This is 2D, Exhibit 2D? 12 A. Yes. 2D. That's right. And it's the -- 13 MR. COX: How many pages? 14 THE WITNESS: Well, it appears to be nine 15 pages in. 16 BY MR. SWANSON: 17 Q. These are -- 18 A. I don't know why there's two sets of page 19 numbers, but there's... 20 Q. Is this under "validation"? 21 A. I'm looking under 17.0, that section 22 called "records." 23 Q. Oh, is this -- oh, yours aren't tabbed 24 that way. 25 Sorry, did you say "inspection measures</p>	<p style="text-align: right;">Page 359</p> <p>1 speaks of testing in the sections that describe 2 documentation prior to that. Sections 8, 9, 10. 3 Q. So PTI -- 4 A. 13. 5 Q. I'm sorry. PTI started manufacturing in 6 2004 or '5, around there; right? 7 A. I need to check my notes on that. 8 So I show that in 2004 was the sale of the 9 Royston plant to PTI. 10 Q. And do you know what the records retention 11 was for Royston prior to that, if it had one? 12 A. Once again, I would be looking through 13 these schedules to make that determination. 14 Q. Do you have a table of contents? 15 A. I'm going to see if there's a schedule 16 closer to -- I'm sorry. Is that -- is this my 17 pile here or that's? Not my pile. 18 Q. Any of those are ones you can -- those are 19 all marked as exhibits, so. 20 A. Okay. So I found one in my pile that's 21 2002. So that would be closer to the sale to PTI. 22 Q. And what is that marked as? What's the 23 exhibit number, I mean? Exhibit number? 24 A. Oh, I'm sorry. It's 12. 25 Q. Thank you.</p>

<p style="text-align: right;">Page 360</p> <p>1 A. And I do note that there are additional 2 definitions at the bottom of the schedule. 3 Q. Okay. And you're looking at a 2002 4 records retention schedule of Johnson & Johnson 5 Consumer and Personal Care companies; correct? 6 A. Yes. 7 Q. And is there something in here -- I had 8 asked you about Royston or whoever was doing the 9 manufacturing prior to PTI, but is there something 10 in this record schedule from 2002 that you see 11 with respect to a retention policy and testing of 12 talc finished product or talc ore or milled talc? 13 A. I'm looking for it. It's -- 14 Q. Did you find anything? 15 A. I mean, this is also -- half the pages are 16 flipped, so I'm -- I would expect that there 17 should be a section in here that would relate to 18 batch record retention. I'm not finding it right 19 now. I could continue to search on the break. 20 Q. Okay. Batch record retention. I'm 21 specifically asking about any kind of testing of 22 the finished product and of the talc that went 23 into the finished product. So that could be a 24 research and development document of the research 25 department or it could be the manufacturing</p>	<p style="text-align: right;">Page 362</p> <p>1 Q. Do you know what the retention was on 2 transmission electron microscopy grids that were 3 created in testing Johnson's Baby Powder or in the 4 talc ore or milled talc for asbestos content at 5 any time? 6 MR. COX: Object to the form. 7 THE WITNESS: No, I don't know that. 8 BY MR. SWANSON: 9 Q. Do you know what the retention was on 10 transmission electron microscopy images of testing 11 of talc ore, milled talc, or cosmetic talc 12 finished product at any time by Johnson & Johnson? 13 MR. COX: Object to the form. 14 THE WITNESS: Unless those have other 15 common terms that I'm familiar with, I don't -- 16 I'm not familiar with those terms. 17 BY MR. SWANSON: 18 Q. Do you know the retention schedule for 19 those? 20 A. I'm not familiar with those -- those -- 21 those categories, so I would not -- 22 Q. They would be images taken from testing -- 23 photomicrographs from testing. They might be 24 included in a testing report. 25 A. Would they be associated with</p>
<p style="text-align: right;">Page 361</p> <p>1 department. 2 You understand that; right? 3 A. Yes. 4 Q. Okay. So that's what you're looking for. 5 A. Well, once again, I can try to match up 6 the comments from Mr. Hicks and others to specific 7 provisions of the schedule. I certainly would not 8 say I'm qualified without exception to determine 9 every place in the retention schedule that's 10 responsive to that question. I can -- I can look 11 for the word "testing" and make those 12 determinations, but I can't speak to an 13 interpretation of every category of the schedule. 14 MR. SWANSON: Move to strike as 15 nonresponsive. 16 BY MR. SWANSON: 17 Q. Okay. So whatever information that you 18 have about the retention of testing reports or 19 things associated with testing is in your notes; 20 is that what you're saying? 21 MR. COX: Object to the form. 22 THE WITNESS: My notes would be the 23 primary source of my knowledge of that 24 information. 25 BY MR. SWANSON:</p>	<p style="text-align: right;">Page 363</p> <p>1 manufacturing? Would they be associated with 2 audits? Would they be associated with other steps 3 of the process? I would -- if -- if, for 4 instance, they were associated with the 5 manufacturing process, Mr. Hicks has an answer for 6 that, that I elicited. If they are associated 7 with audits, there was an answer for that, that I 8 elicited. 9 Q. What testing was done -- what do you mean 10 by "audits" in -- with respect to testing of talc 11 for the presence of asbestos? 12 A. My understanding is that a third party, RJ 13 Lee and potentially other organizations, was 14 contracted to perform quarterly testing of talc. 15 That would have included a range of testing 16 activities. That would have been -- those test 17 results would have been captured and saved 18 separate and apart from any ongoing manufacturing 19 process and preserved. 20 Q. Okay. And where is that information 21 either in the -- in the retention policy, if you 22 know? 23 A. Yeah. As I did note, just flipping 24 through it, there were some categories called 25 "audits," but I have not undertaken to tie</p>

<p style="text-align: right;">Page 364</p> <p>1 Mr. Hicks or Mr. Zappa or other people's comments 2 to specific sections of the schedule.</p> <p>3 Q. Now, with respect to your notes, who did 4 you speak to regarding the testing that was done 5 by outside laboratories, what you called "audit 6 testing"?</p> <p>7 A. I did speak to Mr. Hicks about that. I 8 spoke to members of the supplier quality team. 9 That included -- get my table of contents.</p> <p>10 So amongst the people I spoke to in that 11 regard were David Allen, Don Hicks, Lisa Kaiser, 12 Mark Zappa, Nicholas Zhu, Pankaj Verma, and Sean 13 Park. Lorena Telofski may have mentioned it as 14 well. I would then look through those people's 15 notes to see who specifically referenced it. But 16 those were the -- those were the people in the 17 supplier quality area that I spoke to.</p> <p>18 Q. And what was -- was there a formal -- 19 did -- well, let me start this way: When was 20 the -- from what you gathered, first of all, 21 generally speaking, what was your understanding of 22 Johnson & Johnson's retention policies on talc 23 testing by third parties that were hired by 24 Johnson & Johnson to do these quarterly tests or 25 audits?</p>	<p style="text-align: right;">Page 366</p> <p>1 the quarterly global testing, yes.</p> <p>2 BY MR. SWANSON:</p> <p>3 Q. And then it says -- then he sent to RJ 4 Lee. "Did not retain anything."</p> <p>5 You mean Don Hicks didn't retain anything; 6 is that what that means?</p> <p>7 A. Correct.</p> <p>8 Q. And what did you ask him that elicited 9 that answer that he didn't retain anything? What 10 was that in reference to? That he didn't have a 11 record of it?</p> <p>12 A. No, not the records. It was whether he 13 maintained any elements of the samples themselves.</p> <p>14 Q. And what did he do with whatever remainder 15 of the sample that he didn't send to RJ Lee?</p> <p>16 MR. COX: Object to the form. 17 Mischaracterizes the testimony just given.</p> <p>18 THE WITNESS: My understanding is that he 19 requested 500-gram samples and he sent them along 20 500-gram samples to RJ Lee.</p> <p>21 BY MR. SWANSON:</p> <p>22 Q. What's the next reference you were 23 referring to in terms of this quarterly testing, 24 because this doesn't say anything about how long 25 the testing results or the documents about the</p>
<p style="text-align: right;">Page 365</p> <p>1 A. My understanding is that those were 2 considered part of a system of record. They were 3 stored in a system called "TrackWise" and also in 4 a system called "Microsoft SharePoint" and subject 5 to indefinite retention.</p> <p>6 Q. And where is that in your notes?</p> <p>7 A. Well, there is a -- there were pieces of 8 it in different parts of my notes.</p> <p>9 So, for instance, the RJ Lee testing was 10 on page 14 of my Don Hicks discussion.</p> <p>11 Q. Okay. Are you talking about this 12 quarterly global testing in 2009?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 A. Then on page --</p> <p>16 Q. Hold on a second, since we're talking 17 about that. So it says here that "start tested 18 quarterly global testing 2009" -- "started 19 quarterly" testing in 2009. And then in 20 parentheses, "also tested at an earlier time."</p> <p>21 And it said that Don requested 500-gram 22 samples from every manufacturing site.</p> <p>23 And this you understand to be as of 2009?</p> <p>24 MR. COX: Object to the form.</p> <p>25 THE WITNESS: The -- the context was for</p>	<p style="text-align: right;">Page 367</p> <p>1 testing should be retained; correct?</p> <p>2 A. Correct.</p> <p>3 Q. Where is the next one?</p> <p>4 A. Page 18, which is the Mark Zappa 5 discussion and that is about -- about 18 lines 6 from the bottom.</p> <p>7 Q. I'm sorry. Where?</p> <p>8 A. 18 lines from the bottom of page 18.</p> <p>9 Q. And what are you looking at?</p> <p>10 A. "Quarterly mine results also scanned into 11 SharePoint. Dedicated talc SharePoint site 12 includes testing. Don kept records in physical 13 binder until he left and then it was migrated to 14 SharePoint until 2014. No additional steps needed 15 to conform to legal hold. Already hold 16 everything."</p> <p>17 Then it notes the mine assessment may 18 routinely come through email, and the -- also 19 notes that the supplier tests were managed in the 20 TrackWise system.</p> <p>21 Q. It says that this -- well, first of all, 22 Don kept records in a physical binder.</p> <p>23 Do you have any idea how far back those 24 records went, without guessing?</p> <p>25 A. I can only note that he -- his involvement</p>

<p style="text-align: right;">Page 368</p> <p>1 with manufacturing quality started in 2001.</p> <p>2 Q. Don Hicks' did?</p> <p>3 A. Yes.</p> <p>4 Q. And do you know whether or not that</p> <p>5 binder -- do you know if that binder contained the</p> <p>6 testing results? It just says "kept records." I</p> <p>7 know there's some discussion about testing, but</p> <p>8 I'm trying to figure out if Don kept records in</p> <p>9 physical binders, what specific records was he</p> <p>10 keeping in a physical binder?</p> <p>11 A. I interpreted that, the conversation, to</p> <p>12 be regarding the testing results, the quarterly</p> <p>13 test results. That was my understanding.</p> <p>14 Q. And did you ask -- I mean, I'm looking at</p> <p>15 your notes here of Hicks and Zappa, and when you</p> <p>16 were asking people who were responsible for</p> <p>17 records and information management, you were</p> <p>18 asking all about hold periods, holds and retention</p> <p>19 periods, and the policies from what we've seen in</p> <p>20 the notes. But I see here -- I don't see you</p> <p>21 asking either of these people, Mark or Don, why --</p> <p>22 or what their understanding was of the retention</p> <p>23 schedule or any holds at the time.</p> <p>24 In other words, did you ask them, well,</p> <p>25 what was the policy -- what was the -- what was</p>	<p style="text-align: right;">Page 370</p> <p>1 MR. COX: Object as asked and answered.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. SWANSON:</p> <p>4 Q. And because Mark started in 2006 and you</p> <p>5 didn't specifically ask Don that, you don't know</p> <p>6 if his binder included quarterly testing results</p> <p>7 going all the way back to 2001, do you?</p> <p>8 A. I did not ask the date range of the</p> <p>9 binder.</p> <p>10 Q. What other reference do you have about --</p> <p>11 in your notes regarding retention periods -- or</p> <p>12 let's add holds to this -- for quarterly testing?</p> <p>13 And if you see anything in there on any other type</p> <p>14 of asbestos testing of the talc or the finished</p> <p>15 talc products, I want to know about it -- that we</p> <p>16 haven't discussed already.</p> <p>17 A. Well, the next --</p> <p>18 MR. COX: Objection to form.</p> <p>19 Go ahead.</p> <p>20 THE WITNESS: I'm sorry.</p> <p>21 The next place this is referenced is in</p> <p>22 the Nicholas Zhu section on page 20.</p> <p>23 MR. SWANSON: Before you get into that,</p> <p>24 hold that thought.</p> <p>25 Let's go off the record so that the</p>
<p style="text-align: right;">Page 369</p> <p>1 the company policy on holds? What policy were you</p> <p>2 following on retention schedules for any of these</p> <p>3 records that you were generating or receiving?</p> <p>4 MR. COX: Object to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: Well, I would disagree in</p> <p>7 part in the sense that in the page 18 discussion</p> <p>8 with Mr. Zappa, he indicated no additional steps</p> <p>9 needed to conform to legal hold. They were</p> <p>10 already holding everything going forward.</p> <p>11 BY MR. SWANSON:</p> <p>12 Q. Well, specifically what did you ask him</p> <p>13 about? What did he say other than -- what did you</p> <p>14 ask about legal holds?</p> <p>15 A. I asked if the system had any provision or</p> <p>16 capability to enable a legal hold of those</p> <p>17 materials.</p> <p>18 Q. And those materials, again, you're talking</p> <p>19 about these quarterly testing results; is that</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. So -- and that -- what happened to the</p> <p>23 physical binder that Don had?</p> <p>24 A. I don't know.</p> <p>25 Q. Was it destroyed?</p>	<p style="text-align: right;">Page 371</p> <p>1 digital media can be changed on the video</p> <p>2 recorder.</p> <p>3 THE VIDEOGRAPHER: Thank you.</p> <p>4 This marks the end of Media Disk 3 in the</p> <p>5 deposition of James Mittenenthal.</p> <p>6 We are going off the record at 2:55 p.m.</p> <p>7 (Off the record.)</p> <p>8 THE VIDEOGRAPHER: We are on the record at</p> <p>9 3:12 p.m.</p> <p>10 This marks the start of Media Number 4 in</p> <p>11 the deposition of James Mittenenthal.</p> <p>12 Counsel, you may continue.</p> <p>13 BY MR. SWANSON:</p> <p>14 Q. Mr. Mittenenthal, I think we were going</p> <p>15 through -- we were talking about quarterly reports</p> <p>16 and also other testing of the talc or finished</p> <p>17 product for the presence of asbestos and the</p> <p>18 retention periods or practices related to those.</p> <p>19 And I think we had sort of exhausted what you</p> <p>20 could say about the policies. But as to your</p> <p>21 notes, were there other references in your notes</p> <p>22 that you had in mind that are the basis of your</p> <p>23 understanding?</p> <p>24 A. Yes. So in the previous conversation, I</p> <p>25 was simply walking through places in my notes</p>

<p style="text-align: right;">Page 372</p> <p>1 where quarterly audit testing or RJ Lee testing 2 had been captured, and the next place I had come 3 to was Nicholas Zhu, which is page 20. 4 So there are sections that talk about 5 batch records and mining and processing. Then it 6 goes down to about eight, nine lines from the 7 bottom, "quarterly testing third-party RJ Lee 8 cites in India, China, Thailand sent talc samples 9 to RJ Lee. Test results stored in SharePoint and 10 shared with manufacturing sites via email. Global 11 SharePoint site with folder dedicated to APAC 12 source quality team may have test results back to 13 2012." 14 Q. So that would correspond to the six years, 15 is that right, that we saw with Don Hicks? From 16 memory he was talking about six years. 17 A. I would actually suggest that Mr. Hicks 18 was talking about batch retention as opposed to 19 quarterly testing retention. 20 Q. Okay. He was talking about -- but he was 21 talking about testing, batch testing; correct? 22 A. Among other things, certificates of 23 analysis and other things associated with the 24 batch or a lot. 25 Q. And that would include testing of</p>	<p style="text-align: right;">Page 374</p> <p>1 in the sense that we don't know the answer to that 2 question from what you learned from him, correct, 3 as to whether or not they only retained it for six 4 years or they didn't start this practice of 5 testing -- quarterly testing until 2012; true? 6 A. True. I just want to go back to my Don 7 Hicks notes for a quick second just to make sure 8 I'm answering that fully. 9 Okay. I checked. And I agree. 10 Q. Okay. Are there any other references that 11 you have to testing of the talc or the finished 12 product in terms of records retention? 13 A. Well, as I mentioned, the walk-through 14 that was encompassed before the break and now it 15 was -- I was really just looking for instances of 16 audit testing and how that was retained. I could 17 do another sweep just for any references to 18 retention of batches. I was -- I was really 19 focusing on looking -- looking for the retention 20 of quarterly audit. I may -- I may have found 21 additional places where there's batch information, 22 but I was -- I had been looking for the RJ Lee 23 quarterly audit information while we were looking 24 for it. 25 Q. On the break?</p>
<p style="text-align: right;">Page 373</p> <p>1 asbestos? 2 A. Testing, yes. 3 Q. In here, what -- to be clear, Nicholas 4 Zhu, he's a supply -- is in supplier quality 5 management. 6 Does he work in China? 7 A. Yes. 8 Q. And did you speak to him on the phone? 9 A. Yes. 10 Q. And he's been there at Johnson & Johnson 11 China for five years; is that right? 12 A. Yes. 13 Q. And his understanding is that these 14 quarterly test results go back to 2012? 15 A. Yes. 16 Q. And do you have any other information as 17 to how far back -- well, do you know if they've 18 only been retained for that five or six-year 19 period or, in other words, there were prior 20 results and they had been retained six years, or 21 they've only been doing that testing back to 2012? 22 A. Yeah. I simply note that he said, you 23 know, don't believe they have anything prior to 24 that. 25 Q. Okay. So that doesn't answer the question</p>	<p style="text-align: right;">Page 375</p> <p>1 A. No. While we were going through this 2 exercise, I was focusing on the quarterly audits. 3 Q. And what I asked the last couple of 4 questions was go ahead and expand that. I mean, 5 initially we started with Don Hicks and some of 6 the testing that had been related to 7 manufacturing; right? 8 And so, since we're taking the time to go 9 through your notes on this, I'm interested in all 10 references to retention of testing records that 11 would involve testing for asbestos, whether that's 12 testing at the manufacturing facility or the 13 quarterly. 14 A. Uh-huh. 15 Q. Okay? 16 A. Okay. 17 Q. All right. So -- 18 A. So the next one was Pankaj Verma, page 21. 19 Q. Okay. 20 A. And he indicated that "audit reports were 21 stored in TrackWise, a validated system." And his 22 comments about a validated system I understood 23 that to mean, among other things, that the -- that 24 this was a system of record and that the 25 information would be stored indefinitely in that</p>

<p style="text-align: right;">Page 376</p> <p>1 system.</p> <p>2 And that TrackWise was, in fact, a global</p> <p>3 system, meaning information that he input or that</p> <p>4 happened in his region would be visible anywhere</p> <p>5 around the world.</p> <p>6 He --</p> <p>7 Q. This is -- okay. So let's just back up</p> <p>8 for a second there now.</p> <p>9 Mr. Verma is director of APAC external</p> <p>10 manufacturing quality; right?</p> <p>11 A. Yes.</p> <p>12 Q. And he's been working there for seven</p> <p>13 years at J&J.</p> <p>14 Does that mean including four years at J&J</p> <p>15 India Mumbai?</p> <p>16 A. You know, it's ambiguous because he then</p> <p>17 says he was responsible for management and mining</p> <p>18 for the last ten years. I'd have to double-check</p> <p>19 that.</p> <p>20 Q. You said that this audit reports -- now,</p> <p>21 how do you know that those audit reports that are</p> <p>22 being referred to there are auditing actual</p> <p>23 testing -- testing results, testing talc for</p> <p>24 asbestos?</p> <p>25 A. The -- up above where it says "raw and</p>	<p style="text-align: right;">Page 378</p> <p>1 including corrective actions, 2014." That's in</p> <p>2 your notes on this same page.</p> <p>3 A. Yes. For that region. I was looking --</p> <p>4 okay. I wanted to see TrackWise in general. But,</p> <p>5 yes, for that region it is in my notes.</p> <p>6 Q. Right. So for that region, the</p> <p>7 information wasn't being entered into TrackWise</p> <p>8 until 2014; right?</p> <p>9 A. Yes.</p> <p>10 Q. And it came -- and it transferred over</p> <p>11 from a different system? Well, let me ask you</p> <p>12 what that reference means. "...a validated</p> <p>13 system. Prior to that, ETQ Symphony, including</p> <p>14 corrective actions." What does that mean?</p> <p>15 A. So the first line, "Audit report stored in</p> <p>16 TrackWise, a validated system," that stands on its</p> <p>17 own.</p> <p>18 And then the system prior to that for</p> <p>19 storing audit reports was ETQ Symphony, and that</p> <p>20 system also happened to store corrective actions.</p> <p>21 Q. And do you know if that information was</p> <p>22 transferred over that was in ETQ?</p> <p>23 A. It doesn't say explicitly in here.</p> <p>24 Q. Was the switch to TrackWise in 2014?</p> <p>25 A. That's my understanding. I also wanted to</p>
<p style="text-align: right;">Page 377</p> <p>1 packaging materials suppliers, talc part of his</p> <p>2 portfolio" then below that "audit of talc</p> <p>3 manufacturing site ensuring that talc supplier</p> <p>4 follows specs, testing, and overall global specs."</p> <p>5 Q. So but there's a number of things in</p> <p>6 there. So following specs. What was the talc</p> <p>7 supplier for -- which talc supplier are we talking</p> <p>8 about now? Do you know? Is it China?</p> <p>9 A. Well, it appeared from the conversation he</p> <p>10 was referring to both India and China.</p> <p>11 Q. Okay. And you said that the audit reports</p> <p>12 are stored in TrackWise. Is there -- you said</p> <p>13 that you thought that that was -- well, strike</p> <p>14 that.</p> <p>15 How far back do these audit reports go?</p> <p>16 Do you know?</p> <p>17 A. I do not.</p> <p>18 Q. And how long have they been stored in</p> <p>19 TrackWise? For how many years?</p> <p>20 A. I'm going to look at my -- if I can find</p> <p>21 it quickly, my spreadsheet. I might need some</p> <p>22 help.</p> <p>23 Q. Well, it says right here -- maybe this</p> <p>24 helps you -- "audit reports stored in TrackWise, a</p> <p>25 validated system. Prior to that, ETQ Symphony,</p>	<p style="text-align: right;">Page 379</p> <p>1 find my -- I don't see my -- is there something I</p> <p>2 can lay my hands on? The list of -- is that one</p> <p>3 of the exhibits floating around the table</p> <p>4 possibly?</p> <p>5 Q. I'm sorry. What are you looking for?</p> <p>6 A. Sort of a Jim Mittenhal set of lists. I</p> <p>7 think it might be in one of those maybe.</p> <p>8 Q. I think -- it's got to be in like</p> <p>9 Exhibit 2?</p> <p>10 A. No. It's like the three tables of the</p> <p>11 applications, the timeline, and the names.</p> <p>12 Q. Talking about this?</p> <p>13 A. Well, that would have been the most recent</p> <p>14 edition to it.</p> <p>15 Q. This?</p> <p>16 A. No. There's one more.</p> <p>17 Q. I can't guess about what you... sorry.</p> <p>18 A. I thought it had been marked.</p> <p>19 Q. It probably has been. I think we marked</p> <p>20 pretty much everything.</p> <p>21 Describe what that document is that you're</p> <p>22 looking for.</p> <p>23 A. It's about a -- well, it's -- would be</p> <p>24 printed on both sides. It's about a four or</p> <p>25 five-page total, and it has a table that has a</p>

<p style="text-align: right;">Page 380</p> <p>1 timeline, it has a table that has a list of</p> <p>2 applications, and a table that has a list of</p> <p>3 people.</p> <p>4 Q. I'm sorry. I'm not -- it's not ringing a</p> <p>5 bell right now.</p> <p>6 A. Okay. This is the document (indicating).</p> <p>7 Q. Oh. I guess it's a document I haven't</p> <p>8 seen yet. Or have I? Okay.</p> <p>9 MR. COX: I think you have. It was part</p> <p>10 of his notes.</p> <p>11 MR. SWANSON: Yeah. Okay.</p> <p>12 BY MR. SWANSON:</p> <p>13 Q. This is a list of people that you</p> <p>14 interviewed; right?</p> <p>15 A. That's part of the list, yeah.</p> <p>16 MR. SWANSON: Chris, was this in the</p> <p>17 binder? This (indicating)? I just want to figure</p> <p>18 out if we marked it or not.</p> <p>19 MR. COX: No. He had it with him on the</p> <p>20 first day, though. I don't know if you marked it</p> <p>21 or not.</p> <p>22 MR. SWANSON: I might not have.</p> <p>23 MR. COX: There were a couple of things</p> <p>24 that were not marked.</p> <p>25 MR. SWANSON: Let's go ahead and mark</p>	<p style="text-align: right;">Page 382</p> <p>1 Q. And I apologize if I asked a question I've</p> <p>2 already asked.</p> <p>3 How far back did those talc testing audit</p> <p>4 reports go?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. What's the next -- and you don't</p> <p>7 know if this policy and practice or practice that</p> <p>8 was happening for the last several years as to, I</p> <p>9 think India and Thailand, were also practiced in</p> <p>10 the Philippines or Hong Kong, do you?</p> <p>11 A. Just the first part of the sentence again,</p> <p>12 please?</p> <p>13 Q. Do you know if this practice with respect</p> <p>14 to these audit reports and currently putting them</p> <p>15 in TrackWise and prior to that into ETQ Symphony,</p> <p>16 do you know if that was -- if that applied to the</p> <p>17 Philippines or Hong Kong?</p> <p>18 A. Well, in the earlier conversation,</p> <p>19 Mr. Nicholas Zhu identified himself as responsible</p> <p>20 for the Philippines and noted that the use of --</p> <p>21 noted the SharePoint site.</p> <p>22 Q. Didn't we talk about that?</p> <p>23 A. Yes.</p> <p>24 Q. All right. As to talc -- are there any</p> <p>25 other references that you have into retention</p>
<p style="text-align: right;">Page 381</p> <p>1 that.</p> <p>2 Mr. Mittenenthal, so we that we've got a</p> <p>3 copy of it and so we just have a record of what</p> <p>4 you're looking at there.</p> <p>5 That's going to be Exhibit 31.</p> <p>6 (Whereupon, Plaintiff's Exhibit 31 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. SWANSON:</p> <p>9 Q. Just for the record, can you tell me what</p> <p>10 Exhibit 31 is?</p> <p>11 A. Yes. It's three lists, and they are lists</p> <p>12 that I compiled going through my notes. The first</p> <p>13 part of the lists are just simply the people I</p> <p>14 spoke to. The second part of the lists were the</p> <p>15 applications that were discussed. And the third</p> <p>16 part of the lists were dates mentioned by people</p> <p>17 that I spoke to.</p> <p>18 And I have gone to the second area of the</p> <p>19 list, the applications discussed, in order to</p> <p>20 ascertain information about TrackWise. And I just</p> <p>21 have a general note that it was effective in 2014</p> <p>22 and preceded by ETQ.</p> <p>23 Q. Okay. All right. Let's see. We were on</p> <p>24 page, I think it was 21?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 383</p> <p>1 of -- retention policies or practices that you</p> <p>2 know about that we haven't discussed already?</p> <p>3 A. Well, in the -- further on in the section</p> <p>4 about Pankaj Verma, which is page 21, there is a</p> <p>5 notation, "expect a defined period of retention</p> <p>6 for suppliers. Typically shelf life plus one</p> <p>7 year."</p> <p>8 So there is a general statement about</p> <p>9 document retention that once again echos the</p> <p>10 "expected shelf life plus one year" notion.</p> <p>11 Q. So that's the six years basically; right?</p> <p>12 A. Yes.</p> <p>13 Q. And that would include testing?</p> <p>14 A. Yes.</p> <p>15 MR. COX: Object to the form.</p> <p>16 BY MR. SWANSON:</p> <p>17 Q. And here's another reference, and I think</p> <p>18 this is consistent with what you just said. If</p> <p>19 you go to page 61, 62. This is as to Pam Downs.</p> <p>20 A. Yes.</p> <p>21 Q. And Pam Downs is the person you've had the</p> <p>22 most discussions with overall about Johnson &</p> <p>23 Johnson's record searches and production and that</p> <p>24 sort of thing other than perhaps the attorneys;</p> <p>25 correct?</p>

<p style="text-align: right;">Page 384</p> <p>1 A. I would generally agree.</p> <p>2 Q. And she's the principal at Triality which</p> <p>3 is a company that works for Johnson & Johnson</p> <p>4 dealing with their document searches and</p> <p>5 productions on various levels; correct?</p> <p>6 A. Yes. Evidence management.</p> <p>7 Q. Evidence management. Okay.</p> <p>8 If you look at what she said here on</p> <p>9 page 62, near the top of the page it says, "Some</p> <p>10 testing records maintained by third parties," and</p> <p>11 then it says, "evaluate testing quarterly."</p> <p>12 I don't know, do you know what that meant,</p> <p>13 "evaluate testing quarterly" meant, when you spoke</p> <p>14 to her initially then back in April of 2018?</p> <p>15 A. Yeah. It's kind of mashed together. But</p> <p>16 I would say "evaluate the talc by testing</p> <p>17 quarterly" would be a more complete version of the</p> <p>18 sentence.</p> <p>19 Q. And then she also says retention of</p> <p>20 testing docs was generally shelf life, a product</p> <p>21 plus one year; correct?</p> <p>22 A. Yes.</p> <p>23 Q. So, again, that's -- then the shelf life</p> <p>24 of the product is considered to be five years for</p> <p>25 Johnson's Baby Powder; true?</p>	<p style="text-align: right;">Page 386</p> <p>1 But in terms of what practices you've</p> <p>2 gathered from interviewing these witnesses was</p> <p>3 that it was generally about six years for testing</p> <p>4 results.</p> <p>5 MR. COX: Object to the form.</p> <p>6 BY MR. SWANSON:</p> <p>7 Q. For testing; correct?</p> <p>8 A. I would seek to make a clean separation</p> <p>9 between testing from -- that accompanies batches</p> <p>10 or the manufacturing process as opposed to testing</p> <p>11 that stands apart from -- from a particular batch</p> <p>12 or a lot, and whereas Mr. Hicks indicated that</p> <p>13 that regular quarterly audit started in 2009, he</p> <p>14 also indicated that there were other testing that</p> <p>15 was done separate and apart, from batches and</p> <p>16 audits -- sorry -- separate and apart from batches</p> <p>17 and lots that occurred prior to 2009.</p> <p>18 So batch lot testing with its shelf</p> <p>19 life-based retention here; quarterly audits and</p> <p>20 prior to 2009 an occasional audit-like testing</p> <p>21 over here (indicating).</p> <p>22 Q. Now, when Pam Downs is talking about this,</p> <p>23 retention of testing, she's talking about the</p> <p>24 quarterly audits or is she talking about -- do you</p> <p>25 know, or is she talking about testing done in</p>
<p style="text-align: right;">Page 385</p> <p>1 MR. COX: Object to the form.</p> <p>2 THE WITNESS: I would conclude that. I</p> <p>3 wouldn't be able to speak on it with authority,</p> <p>4 but that sounds in the range based on what Don</p> <p>5 Hicks said as well as these other comments.</p> <p>6 BY MR. SWANSON:</p> <p>7 Q. So generally it seems like people are</p> <p>8 saying it's shelf life, which is about five years,</p> <p>9 plus a year for the preservation of the testing</p> <p>10 results except in these instances recently where</p> <p>11 you've said that some of the information got put</p> <p>12 into -- I forget what the name of the platform</p> <p>13 was.</p> <p>14 MR. COX: Object to the form.</p> <p>15 THE WITNESS: Well, going back to</p> <p>16 Mr. Hicks, he indicated that, I think it was</p> <p>17 Mr. Hicks, if not Mr. Zappa, that RJ Lee started</p> <p>18 testing in 2009 and that that quarterly testing</p> <p>19 was kept.</p> <p>20 BY MR. SWANSON:</p> <p>21 Q. So prior to 2009, at least in practice,</p> <p>22 even though we haven't really determined it from</p> <p>23 you looking at the policies because you haven't</p> <p>24 been able to quite straighten that out, although</p> <p>25 there was a reference in a policy.</p>	<p style="text-align: right;">Page 387</p> <p>1 conjunction with manufacturing?</p> <p>2 A. She's -- when she talks about shelf life</p> <p>3 of a product plus one year, it's in connection</p> <p>4 with manufacturing.</p> <p>5 Q. Okay. Now, go to page -- before I leave</p> <p>6 generally this area of testing for talc or</p> <p>7 finished product for asbestos and the retention of</p> <p>8 those records, do you have any other information</p> <p>9 as the representative of Johnson & Johnson to add</p> <p>10 as far as when specific retention practices or</p> <p>11 policies came into place and how long the</p> <p>12 retention periods were that we haven't spoken</p> <p>13 about?</p> <p>14 MR. COX: Object to the form.</p> <p>15 THE WITNESS: When I spoke of the places</p> <p>16 in my notes, and I believe we've captured many of</p> <p>17 those places both for the quarterly audits and for</p> <p>18 the manufacturing-related testing, there are</p> <p>19 references in the retention schedules I -- I had</p> <p>20 difficulty tying them one by one. But they're --</p> <p>21 the retention schedule would specify those</p> <p>22 applicable periods as well.</p> <p>23 The supplier audits -- the external</p> <p>24 supplier audit agreements -- or the external</p> <p>25 supplier agreement also encompassed retention</p>

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1 periods in them as we went through. And I think,
2 as I mentioned when we first started talking about
3 this, the legal holds would also specify testing
4 as a category to be held.
5 BY MR. SWANSON:
6 Q. Now, on retention schedules, we talked
7 about 1997 being the first actual retention
8 schedule. And you couldn't really tell from
9 looking at that whether that applied to the talc
10 testing, correct, at least from the preliminary
11 look that you took a couple of hours ago when we
12 looked at that; right?
13 MR. COX: Object to the form.
14 **THE WITNESS: My understanding is that**
15 **those schedules would cover those intervals. I**
16 **would just need further study to tie the specific**
17 **references made by Mr. Hicks, Ms. Downs, Mr. Zhu,**
18 **Mr. Zappa, Mr. Verma, and others back to their**
19 **accompanying periods in the schedules themselves.**
20 BY MR. SWANSON:
21 Q. Do you have any information -- and I may
22 ask you that tomorrow, because I don't want to
23 continue your deposition indefinitely into the
24 future, and I'm sure you probably agree with me
25 there. So I may come back on that to see if we

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1 can specifically locate those.
2 But setting that aside, do you have any
3 information that there was any kind of formal
4 retention policy as to testing -- now you've said
5 the first hold was in 1999; correct?
6 **A. Yes.**
7 Q. And the first policy we have for retention
8 is 1997; correct?
9 **A. Yes.**
10 Q. So do you have any information that there
11 was -- that Johnson & Johnson had a retention
12 schedule or retention hold prior to 1997 that
13 would dictate the retention of any kind of testing
14 of Johnson's Baby Powder, or cosmetic talc
15 products, or the talc ore, or the milled talc that
16 was used in those products for asbestos?
17 MR. COX: Object to the form.
18 **THE WITNESS: Insofar as holds, I have no**
19 **knowledge of anything before that. Insofar as**
20 **retention schedules, I have information from the**
21 **company that there were retention schedules**
22 **created in the early '90s. The earliest one made**
23 **available to me has been 1997. It's my**
24 **understanding that the retention schedules are**
25 **intended to cover topics such as retention of**

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1 testing documentation.
2 I have not seen anything earlier to 1997.
3 I have just a general understanding that the --
4 the very purpose of the retention schedules is
5 to -- is to address the retention of materials
6 that would be classified in the company's business
7 operations which would include testing.
8 I haven't seen anything prior to 1997.
9 BY MR. SWANSON:
10 Q. Okay. And we had -- and I wish I could
11 remember who it was you spoke to -- and we spoke
12 at length about a retention policy that was
13 referred -- retention, some kind of retention
14 policy that was referred to in your notes as of
15 the early 1990s. Remember that? And it was
16 supposedly based on the McNeil subsidiary's
17 retention policy?
18 **A. That was -- well, that was authored by**
19 **Rosina Sheerin. There may have been references to**
20 **it, both from her discussion and possibly Michelle**
21 **Anderson.**
22 Q. And when I asked you about that at that
23 time, you told me you didn't know the particulars
24 of that retention policy.
25 Do you remember that?

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1 **A. That's right.**
2 Q. And you still don't know the particulars
3 of the retention policy; true?
4 **A. That's right.**
5 Q. And Lorena, she didn't tell you that this
6 retention policy was for testing results of the
7 talc for asbestos, did she?
8 **A. I believe you mean Rosina?**
9 Q. Rosina, yes.
10 **A. Correct.**
11 Q. You mentioned earlier, before I started
12 asking you these questions, that you -- you had
13 that understanding that that policy would be.
14 Are you speculating those earlier -- the
15 earlier policy from the earlier 1990s?
16 **A. I'm simply saying that the purpose of a**
17 **retention policy is to cover the documents that**
18 **the company uses in the course of its business.**
19 **I -- I haven't seen them. I don't know one way or**
20 **the other whether testing is on there. I have**
21 **seen the 1997 schedule, which makes reference to**
22 **some types of testing. I'm not able to interpret**
23 **every category of testing and what that means. I**
24 **just know I've seen testing in the '97 schedule.**
25 Q. What I want to do tomorrow so that I

<p style="text-align: right;">Page 392</p> <p>1 don't -- I think I've closed that out for now, and</p> <p>2 I hate to give you homework, but before we start</p> <p>3 tomorrow, if you could look at those retention</p> <p>4 schedules so I can ask this question again because</p> <p>5 I do want to get to the bottom of this, because</p> <p>6 you're referring to 1997, and you weren't sure</p> <p>7 when I asked you if those were really regarding</p> <p>8 talc testing. So that if you could look at a more</p> <p>9 recent policy or two in 1997 that would help us</p> <p>10 and it wouldn't take us very long to get through</p> <p>11 it at that point as opposed to us slogging through</p> <p>12 it page by page.</p> <p>13 Is that something you can do?</p> <p>14 MR. COX: Hold on. First of all, we</p> <p>15 object to the continuation of this deposition</p> <p>16 beyond today, and we can talk about that more at a</p> <p>17 break, Mark. But we can also talk about whether</p> <p>18 Mr. Mittenenthal can look at what you're asking him</p> <p>19 to look at, at a break today.</p> <p>20 MR. SWANSON: Sure.</p> <p>21 BY MR. SWANSON:</p> <p>22 Q. All right. I want you to look at page 24</p> <p>23 of your notes, please.</p> <p>24 A. I'm there.</p> <p>25 Q. Now, prior to PTI doing the manufacturing</p>	<p style="text-align: right;">Page 394</p> <p>1 Q. Strike that.</p> <p>2 But if we went from Royston, Johnson &</p> <p>3 Johnson Royston to PTI in 2004 or '5, we talked</p> <p>4 about that; right?</p> <p>5 A. Yes.</p> <p>6 Q. The question is, do you have any</p> <p>7 information that at the Royston facility, the</p> <p>8 manufacturing facility, there was a retention</p> <p>9 policy as to any testing documents that were being</p> <p>10 generated by them, or received by them, in other</p> <p>11 words, generated during manufacturing or received</p> <p>12 by them in terms of, like, talc supply that they</p> <p>13 received?</p> <p>14 A. My understanding is that those would have</p> <p>15 been subject to the franchise level retention</p> <p>16 policies that we discussed for which we have '97</p> <p>17 and others, and also, where applicable, subject to</p> <p>18 a legal hold within the appropriate time frames.</p> <p>19 Q. Now, going back before Royston,</p> <p>20 manufacturing was done at New Brunswick; correct?</p> <p>21 North Brunswick, sorry.</p> <p>22 A. Well, I certainly am not able to speak --</p> <p>23 Q. This is at page 24. I understand. But</p> <p>24 obviously -- I mean, we can both agree that you</p> <p>25 have been hired to act as a representative for</p>
<p style="text-align: right;">Page 393</p> <p>1 of the domestic Johnson's Baby Powder, it was done</p> <p>2 by Royston, is that right, or did it go from -- is</p> <p>3 that correct?</p> <p>4 A. Well, my general understanding is that</p> <p>5 Royston was the name of a company facility.</p> <p>6 Q. And that was in Georgia?</p> <p>7 A. Yes.</p> <p>8 Q. And do you know if the Royston facility</p> <p>9 had any retention policy with respect to any</p> <p>10 testing that they did for certificates of analysis</p> <p>11 on the presence of asbestos in the product or in</p> <p>12 the talc that was coming in?</p> <p>13 A. My understanding was that Royston would be</p> <p>14 part of the company and would be subject to any</p> <p>15 consumer -- consumer retention policies in place.</p> <p>16 Q. And Royston did the manufacturing up until</p> <p>17 2004 or '5 when it went to PTI; is that correct?</p> <p>18 A. Well, Johnson & Johnson did the</p> <p>19 manufacturing at its Royston facility. That's my</p> <p>20 understanding.</p> <p>21 Q. And do you know how far back that went,</p> <p>22 that Royston did the manufacturing?</p> <p>23 MR. COX: Objection. Beyond the scope of</p> <p>24 the notice.</p> <p>25 BY MR. SWANSON:</p>	<p style="text-align: right;">Page 395</p> <p>1 Johnson & Johnson and you've done certain</p> <p>2 research. And so, with that in mind, your notes</p> <p>3 from your interview with Lorena Telofski at</p> <p>4 page 24 of your notes indicates that the</p> <p>5 manufacturing was done at North Brunswick?</p> <p>6 MR. COX: Object.</p> <p>7 BY MR. SWANSON:</p> <p>8 Q. Correct?</p> <p>9 MR. COX: Sorry. Object to the extent</p> <p>10 you're seeking to elicit testimony from someone</p> <p>11 who's not designated about topics as to where the</p> <p>12 product was manufactured.</p> <p>13 MR. SWANSON: These are document issues,</p> <p>14 Chris. I'm just trying to get to document issues,</p> <p>15 since that's what we're talking about.</p> <p>16 MR. COX: That's not a document question.</p> <p>17 THE WITNESS: She -- I asked her some</p> <p>18 questions. This was part of her answer. I wrote</p> <p>19 it down.</p> <p>20 BY MR. SWANSON:</p> <p>21 Q. Okay. So from that you understood that</p> <p>22 the manufacturing went from North Brunswick to the</p> <p>23 Royston plant; correct?</p> <p>24 A. That's what she indicated.</p> <p>25 Q. And some of the manufacturing was done by</p>

<p style="text-align: right;">Page 396</p> <p>1 Kolmar Laboratories in Port Jervis, New York; 2 correct? 3 MR. COX: Object to the form. Object to 4 the extent it's beyond the scope of the notice. 5 BY MR. SWANSON: 6 Q. From your notes. 7 A. That is in my notes. 8 Q. And that's all we've been talking about. 9 I mean, your understanding from what you learned 10 from talking to people. I understand you have 11 more expertise about documents and retention and 12 that sort of thing, but all this is information 13 that you've gained from talking to people; right? 14 A. Well, I wrote down the -- the -- what was 15 elicited during our conversation, so. 16 Q. So I want to get to the document issues, 17 though. You see that the -- the North Brunswick 18 plant closed down; correct? You see down there 19 where it says, "All buildings in North Brunswick 20 have been sold and taken down"? 21 A. Yes, I do. 22 Q. What happened to the records that were at 23 North Brunswick? 24 A. I don't have that information in my notes. 25 Q. Were they destroyed?</p>	<p style="text-align: right;">Page 398</p> <p>1 THE WITNESS: Can you cite me to a place 2 in my notes for that? 3 BY MR. SWANSON: 4 Q. I lost the cite, but I know that that was 5 done. Let me see if I can find it that they had 6 testing records. 7 I saw this at page 24 and I apologize. 8 I'm not... 9 Oh, you see at 24, it says -- you see the 10 reference to "PO, specs, test records, quality 11 SOPs," about two-thirds of the way down? 12 A. Yes. 13 Q. And that's -- those are records regarding 14 these facilities that were manufacturing; is that 15 right? 16 MR. COX: Object to the form. 17 BY MR. SWANSON: 18 Q. You see below that "testing both for 19 what's in it, what's not in it, purity, et 20 cetera"? 21 A. Absolutely. Although I'm not -- it's not 22 clear whether Ms. Telofski is talking about 23 Kolmar, North Brunswick, or Georgia in this -- in 24 this portion. 25 Q. But they are talking about manufacturing</p>
<p style="text-align: right;">Page 397</p> <p>1 MR. COX: Objection. Asked and answered. 2 THE WITNESS: I don't know. 3 BY MR. SWANSON: 4 Q. Now, if you look -- Don -- your notes 5 regarding Don Hicks -- and kind of you could hold 6 on to that Lorena Telofski page 2. But if you 7 look at page 12. 8 A. Yes. 9 Q. You see about six lines down he says, 10 "Responsibility of maintaining records resides 11 with the site doing the work"? 12 A. Yes. 13 Q. Okay. So North Brunswick had the 14 responsibility for those records; correct? 15 A. I can only infer that from -- from 16 Mr. Hicks' comment. I don't know that as a fact, 17 but it could be inferred. 18 Q. Do you know what year that that happened, 19 that the North Brunswick buildings were taken 20 down? 21 A. No. 22 Q. Do you know -- from your notes I see that 23 they were doing testing at the manufacturing 24 facilities; correct? 25 MR. COX: Object to the form.</p>	<p style="text-align: right;">Page 399</p> <p>1 plants having -- and it also says "certificate of 2 conformance and basic testing on inbound talc." 3 So they're receiving testing records and 4 generating their own at manufacturing facilities; 5 right? 6 A. That's my interpretation of her comment. 7 Q. Okay. And, as you sit here today, you 8 don't know what happened with those testing 9 records from North Brunswick, New Jersey plant 10 when that was -- when that manufacturing operation 11 was transferred, or when the buildings were taken 12 down; true? 13 A. Correct. 14 Q. And I think Mark Zappa at the bottom of 15 page 17, he said -- this is just sort of -- at 16 page 17, he says that the shipments of talc had to 17 have a certificate analysis of them that came in. 18 Let me see if I can find that. 19 You see the certificate of -- oh, it says, 20 "Certificate of analysis would include test for 21 asbestos." 22 MR. COX: Object to the form. 23 BY MR. SWANSON: 24 Q. Do you see that? 25 A. Yes, I do.</p>

<p style="text-align: right;">Page 400</p> <p>1 Q. From Lorena Telofski's notes, it would 2 appear that these manufacturing facilities 3 receiving testing records and generating their 4 own, that would have included the Kolmar facility, 5 too; correct?</p> <p>6 MR. COX: Object to the form. Beyond the 7 scope of the notice. Other than what's in his 8 notes.</p> <p>9 BY MR. SWANSON: 10 Q. Page 24.</p> <p>11 A. Oh, thank you. I can't confirm that -- 12 which facilities she's talking about, as I 13 mentioned, whether it's Kolmar, North Brunswick, 14 or Georgia, or all of them.</p> <p>15 Q. And again, I understand that you're not 16 here as the PMQ on where all the manufacturing 17 sites were, but these are all records questions. 18 I'm just asking a foundational question here.</p> <p>19 Do you know when Kolmar Laboratories 20 started and during what period of time it was 21 manufacturing Johnson's Baby Powder?</p> <p>22 MR. COX: Objection. Beyond the scope of 23 the notice.</p> <p>24 BY MR. SWANSON: 25 Q. And if you don't know, that's fine.</p>	<p style="text-align: right;">Page 402</p> <p>1 was stored in Iron Mountain under her 2 jurisdiction.</p> <p>3 Q. Okay. So as to Kolmar, let me get back to 4 the question, do you know at the Kolmar 5 manufacturing packaging facility what they did 6 with respect to the retention and archiving of 7 records?</p> <p>8 A. No.</p> <p>9 Q. And do you know when that facility no 10 longer was manufacturing Johnson's Baby Powder, 11 what it did with whatever records it had?</p> <p>12 A. No.</p> <p>13 Q. Were those records destroyed?</p> <p>14 MR. COX: Objection. Asked and answered.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 BY MR. SWANSON: 17 Q. I touched on this earlier, but I want to 18 go into this just briefly: Do you have any 19 information regarding the Johnson & Johnson's 20 policies, if any, with respect to what are called 21 "grids" associated with transmission electron 22 microscopy testing?</p> <p>23 MR. COX: Objection. Asked and answered.</p> <p>24 THE WITNESS: I don't -- 25 BY MR. SWANSON:</p>
<p style="text-align: right;">Page 401</p> <p>1 A. I don't know.</p> <p>2 Q. Okay. And do you know whatever records it 3 had regarding certificates of analysis, testing 4 records for asbestos, manufacturing 5 specifications, those sorts of records, do you 6 know how they were archived at that facility?</p> <p>7 A. I have a general comment from Ms. Telofski 8 that there was material put into, I believe it was 9 Iron Mountain, but I'm not sure which -- which 10 materials she is referring to.</p> <p>11 Q. And where is that?</p> <p>12 A. Looking on page 2. Let me see if I can 13 find it. Oh. She was talking about APRs, so I 14 know that some of records she referenced are in 15 Iron Mountain. I don't know which other ones 16 besides the APRs.</p> <p>17 Q. APRs is authorization for product release?</p> <p>18 A. Yes.</p> <p>19 Q. That's not testing records, is it?</p> <p>20 A. Not that I'm aware of.</p> <p>21 Q. And it says it includes formula safety.</p> <p>22 Do you know what plant that is applying to 23 or what plants?</p> <p>24 A. Well, the discussion at that time was 25 about Skillman, but I don't know the scope of what</p>	<p style="text-align: right;">Page 403</p> <p>1 Q. I apologize if I asked. But --</p> <p>2 A. I don't have information on grids.</p> <p>3 Q. Do you have information with respect to 4 what the current retention schedule period is for 5 talc samples? And that would be talc ore, milled 6 talc, or baby powder samples that are tested?</p> <p>7 A. My understanding is based on the legal 8 hold notice, which is -- which is -- specifies 9 that samples are to be retained.</p> <p>10 Q. And the legal hold notice -- now, there's 11 been a sequence of legal hold notices going back 12 to 1999, correct, with respect to talc litigation?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And is it your understanding that 15 those -- that's essentially been continuously in 16 effect since 1999 with respect to anything that 17 was under that original hold?</p> <p>18 A. I read each of the notices. They have 19 descriptions of subject matter. I've noted that 20 those subject matter descriptions have evolved 21 over time.</p> <p>22 Q. Okay. But with respect to samples. And 23 we will talk a little bit more about holds. But 24 just -- well, let me -- let me get off of that and 25 just stay on the retentions for a second.</p>

<p style="text-align: right;">Page 404</p> <p>1 I noticed in Exhibit 2D, or Tab 2D, which</p> <p>2 is Exhibit 2D, the PTI agreement appeared to be</p> <p>3 for retention of talc samples for four years. And</p> <p>4 perhaps we should look at that and I'll ask you</p> <p>5 about that. And that's at page 9 of 2D. Oh, we</p> <p>6 get into this page issue with this, don't we?</p> <p>7 Did you see it in there?</p> <p>8 A. Yes. 7 of 16 and below that, 9 of 19. So</p> <p>9 it's Section 12.4.</p> <p>10 Q. Okay. And what is the -- first of all,</p> <p>11 what samples is this referring to? This is --</p> <p>12 these are product samples that they're referring</p> <p>13 to?</p> <p>14 A. Yes. So this -- this Section 12.4 falls</p> <p>15 under 12.0 product controls, which relate to the</p> <p>16 identification sampling and testing of finished</p> <p>17 product.</p> <p>18 Q. Okay. And so the retention on finished</p> <p>19 product was for what period?</p> <p>20 A. Four years from date of manufacture or one</p> <p>21 year after expiration date.</p> <p>22 Q. What's the -- that's the expiration date,</p> <p>23 for example, that you'd see on the actual bottle</p> <p>24 or container? Is that what that refers to?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 406</p> <p>1 talc samples, either, you know, the talc ore or</p> <p>2 the milled talc that may have been tested on a</p> <p>3 quarterly or some other basis, or of actual</p> <p>4 product test -- finished product test samples?</p> <p>5 A. I have a general understanding that</p> <p>6 samples -- that the universe of samples comprised</p> <p>7 those that were associated with a batch or a lot</p> <p>8 and retained in accordance with -- with the</p> <p>9 company's retention schedules.</p> <p>10 As a second category was samples that were</p> <p>11 used specifically for testing purposes, and those</p> <p>12 samples were not retained until the last year.</p> <p>13 And a third category would be historical</p> <p>14 samples that would be obtained from the museum and</p> <p>15 other sources.</p> <p>16 Q. Thank you for that answer.</p> <p>17 So I think that was pretty clear. So let</p> <p>18 me just -- as to the samples related to testing of</p> <p>19 the talc, you said until a year ago those were not</p> <p>20 retained; correct?</p> <p>21 A. That's correct.</p> <p>22 Q. So they were destroyed?</p> <p>23 A. The samples used specifically for creating</p> <p>24 test results were not retained.</p> <p>25 Q. Okay. And now they are being retained?</p>
<p style="text-align: right;">Page 405</p> <p>1 Q. What's the date of this quality system</p> <p>2 procedure or quality responsibility agreement?</p> <p>3 A. February 2005.</p> <p>4 Q. Do you know -- at this point in 2005,</p> <p>5 there had already been talc litigation hold in</p> <p>6 place as early as 2' -- sorry, 1999.</p> <p>7 Do you know if it affected this retention</p> <p>8 as to the talc that was -- the Johnson -- the baby</p> <p>9 powder that was being manufactured by Pharma Tech</p> <p>10 Industries in 2005?</p> <p>11 MR. COX: Object to the form.</p> <p>12 BY MR. SWANSON:</p> <p>13 Q. In other words, did the legal hold sort of</p> <p>14 suspend this policy?</p> <p>15 MR. COX: You're asking as to the samples</p> <p>16 described in that document?</p> <p>17 MR. SWANSON: Yes.</p> <p>18 THE WITNESS: I'm -- I would want to check</p> <p>19 the legal holds. I'm not aware that the holds in</p> <p>20 that time referred to samples.</p> <p>21 BY MR. SWANSON:</p> <p>22 Q. Okay. Do you have any information other</p> <p>23 than -- and we'll get to the legal holds shortly.</p> <p>24 Do you have any other information in terms</p> <p>25 of retention policies with respect to retention of</p>	<p style="text-align: right;">Page 407</p> <p>1 A. Yes.</p> <p>2 Q. And do you know why that policy was</p> <p>3 changed in the last year?</p> <p>4 A. My understanding is that within the past</p> <p>5 year a request was made to the testing body to</p> <p>6 retain that information.</p> <p>7 Q. And what testing body is that?</p> <p>8 A. Well, that would include RJ Lee, anyone</p> <p>9 else doing testing.</p> <p>10 Q. Okay. So --</p> <p>11 MR. SWANSON: Do you want one last break?</p> <p>12 MR. COX: Sure.</p> <p>13 MR. SWANSON: And then we'll go until the</p> <p>14 end of the day?</p> <p>15 MR. COX: Yeah.</p> <p>16 MR. SWANSON: And if we need to discuss</p> <p>17 anything, we can discuss it.</p> <p>18 MR. COX: Sounds good.</p> <p>19 MR. SWANSON: Let's go off the record.</p> <p>20 THE VIDEOGRAPHER: This marks the end of</p> <p>21 Media Number 4 in the deposition of James</p> <p>22 Mittenthal.</p> <p>23 Going off the record at 4:13 p.m.</p> <p>24 (Recess taken.)</p> <p>25 THE VIDEOGRAPHER: On the record at</p>

<p style="text-align: right;">Page 408</p> <p>1 4:49 p.m. This marks the start of Media Number 5 2 in the deposition of James Mittenenthal. 3 You may continue, Counsel. 4 BY MR. SWANSON: 5 Q. Okay, Mr. Mittenenthal, I'm going to try to 6 be real efficient here for the rest of the part of 7 the day that we have, and we're going to get into 8 talking about holds now which we've touched on a 9 few times, but I want to go over some information 10 about that. 11 THE VIDEOGRAPHER: Is your microphone on? 12 Okay. 13 BY MR. SWANSON: 14 Q. So, in the most basic sense, a legal hold 15 is an instruction to custodians or possessors of 16 certain kinds of specified documents to preserve 17 them and not destroy those documents as long as -- 18 documents and information as long as the hold is 19 in effect; is that correct? 20 A. I would agree. 21 Q. And a hold stays in effect until a hold -- 22 a release notice is issued; is that right? 23 A. I would generally agree. There may be 24 other circumstances besides a release by which a 25 receiver of a hold could be relieved of that</p>	<p style="text-align: right;">Page 410</p> <p>1 A. Johnson's Baby Powder. 2 Q. Sorry. Johnson's Baby Powder. And I 3 think the third one listed there is 2003, the 4 Hozeny case. 5 Do you see that? 6 A. Yes. 7 Q. And I know that's been produced to us. 8 Let me find this. At Exhibit 1B. 9 Do you have that with you? Oh, it's in 10 your -- those exhibits are marked per tab. 11 A. Okay. 12 Q. Exhibit 1B. So in Exhibit 1, you have 13 several holds and then some were produced after 14 that. And you see there, in that hold, this was 15 hold notice issued by the legal department; 16 correct? 17 A. Yes. 18 Q. And this puts folks on notice in the 19 company that if you fail to preserve materials 20 that are under a hold, it can result in the court 21 imposing penalties or sanctions; right? 22 A. Yes. 23 Q. Now, you had previously testified that you 24 had acted as consultant and a witness in the 25 Ethicon litigation for Johnson & Johnson; correct?</p>
<p style="text-align: right;">Page 409</p> <p>1 obligation. 2 But certainly the counterpart to a hold is 3 a release. 4 Q. Okay. And you've got -- you've prepared a 5 history of holds, which is Exhibit 21; correct? 6 A. Is that -- just make sure I've got my 7 version in front of me somewhere. 8 Q. You should have your copy there. I know 9 you've got a lot of stuff. You know, maybe we can 10 get some of your things there out of the way and 11 put them in a stack. 12 A. Here it is. 13 Q. Okay. So Exhibit 21 is a list of Johnson 14 & Johnson holds with respect to talc litigation 15 that you've compiled; correct? 16 A. Yes. 17 Q. Okay. And the first one that you've got 18 there is Theresa Krushinski on November 11, 19199, 19 and that was a talcosis case; correct? 20 A. Yes. 21 Q. And then the next one you've got is 2000, 22 which is a mesothelioma case; correct? 23 A. Yes. 24 Q. And both Johnson & Johnson's Baby Powder; 25 true?</p>	<p style="text-align: right;">Page 411</p> <p>1 A. Consultant and a witness meaning the 2 same -- the same role? 3 Q. Yeah. In the same -- in the Ethicon 4 litigation. Yeah. In other words, you were a 5 witness and you were also their consultant in that 6 litigation; true? 7 A. I was a witness. 8 Q. A witness. 9 A. Not a -- 10 Q. Were you working? Were you hired by 11 Johnson & Johnson? 12 A. I was hired to be a 30(b)(6) only. 13 Q. Okay. All right. And you testified in 14 the case; right? 15 A. Yes. 16 Q. And you know that there was an allegation 17 by the plaintiffs in the case that there was a 18 failure to preserve evidence that had been subject 19 to a hold; right? 20 A. I -- I recall that those issues arose, 21 yes. 22 Q. And you investigated that issue; correct? 23 A. Yes. 24 Q. And you gave a deposition about it? 25 A. Yes.</p>

<p style="text-align: right;">Page 412</p> <p>1 Q. And you discovered through your</p> <p>2 investigation something you testified about that</p> <p>3 potentially responsive documents and information</p> <p>4 were destroyed that had been subject to a hold;</p> <p>5 correct?</p> <p>6 MR. COX: Object to the form. Object that</p> <p>7 this is beyond the scope of the notice.</p> <p>8 THE WITNESS: I investigated and I</p> <p>9 testified as to certain occasions where I had</p> <p>10 observed custodians not preserving materials that</p> <p>11 they could have.</p> <p>12 BY MR. SWANSON:</p> <p>13 Q. And those materials were materials that</p> <p>14 were under holds at the time; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Have there been any -- have there been any</p> <p>17 issues of loss with respect to talc litigation by</p> <p>18 Johnson & Johnson that have not been disclosed to</p> <p>19 plaintiffs that you're aware of from your work in</p> <p>20 these talc cases?</p> <p>21 A. I'm not.</p> <p>22 Q. Now, we've talked about hold release</p> <p>23 notices. You said that was one way that hold</p> <p>24 would no longer be in effect. What's the other</p> <p>25 way that a hold would no longer be in effect if it</p>	<p style="text-align: right;">Page 414</p> <p>1 MR. COX: Object to the form of the</p> <p>2 question.</p> <p>3 THE WITNESS: Well, to my recollection,</p> <p>4 the 2017 holds serve to -- serve that function to</p> <p>5 gather earlier holds. The holds between 1999 and</p> <p>6 2017 refer to specific cases.</p> <p>7 BY MR. SWANSON:</p> <p>8 Q. Okay. Now, you said that you weren't</p> <p>9 aware of any releases of those holds. So, even</p> <p>10 though those holds refer to specific cases, they</p> <p>11 weren't released or no longer in effect just</p> <p>12 because those cases ended, were they?</p> <p>13 MR. COX: Object to the form.</p> <p>14 THE WITNESS: As I mentioned, I hadn't</p> <p>15 seen any releases of those -- of those holds.</p> <p>16 BY MR. SWANSON:</p> <p>17 Q. I understand that. But it's an additional</p> <p>18 question, which is, were those holds still in</p> <p>19 effect on Johnson & Johnson that had been issued</p> <p>20 in specific cases even after the issues of the</p> <p>21 case resolved?</p> <p>22 A. Well, the -- the instructions were -- were</p> <p>23 still out there. In terms of the legal</p> <p>24 obligation, I can't speak to that. That's a legal</p> <p>25 determination. The holds themselves had not been</p>
<p style="text-align: right;">Page 413</p> <p>1 wasn't pursuant to a hold release being issued by</p> <p>2 the legal department?</p> <p>3 A. There could be a direct communication with</p> <p>4 the custodian saying this is not something that's</p> <p>5 required anymore. There could be circumstances</p> <p>6 that -- that result in the obligation for the</p> <p>7 custodian going away.</p> <p>8 Q. Have you -- we haven't received any -- or</p> <p>9 in this case that I've seen, no legal hold</p> <p>10 releases were produced.</p> <p>11 Are you aware of any Johnson & Johnson</p> <p>12 talc litigation legal hold releases that have been</p> <p>13 issued?</p> <p>14 A. I'm not.</p> <p>15 Q. Are you aware of any of the holds having</p> <p>16 been any -- any custodians having been released</p> <p>17 from any of the talc litigation holds that have</p> <p>18 been issued since 1999?</p> <p>19 A. No.</p> <p>20 Q. And is it fair to say that each of the</p> <p>21 holds that you've documented starting in 1999</p> <p>22 through 2017 has essentially been incorporating</p> <p>23 whatever was already under a hold pursuant to the</p> <p>24 prior hold and then adding some more details to</p> <p>25 it; is that -- is that correct?</p>	<p style="text-align: right;">Page 415</p> <p>1 subject to releases.</p> <p>2 Q. Earlier you mentioned that the holds were</p> <p>3 related to, I think you said something like</p> <p>4 consumer talc or something like that.</p> <p>5 Are there -- are there releases related to</p> <p>6 other kind of talc -- not releases. Are there any</p> <p>7 litigation holds that were ever put on Johnson &</p> <p>8 Johnson's businesses with respect to any other</p> <p>9 type of talc, like industrial talc, that you're</p> <p>10 aware of?</p> <p>11 A. I'm not aware. I specifically requested</p> <p>12 consumer talc holds as being reflective of my</p> <p>13 obligations under the notice. I'm not aware of</p> <p>14 other holds.</p> <p>15 Q. Okay. And you've asked -- you've asked</p> <p>16 witnesses about holds, is that correct, people</p> <p>17 that you've spoke to?</p> <p>18 A. The -- the interview subjects, the topic.</p> <p>19 Not in every case but in some cases, it did come</p> <p>20 up.</p> <p>21 Q. Did you ask them if -- did you ask -- did</p> <p>22 you do anything to audit whether or not they were</p> <p>23 complying with holds?</p> <p>24 A. I -- I did not see a compliance audit as</p> <p>25 part of my investigation. I asked in some cases</p>

<p style="text-align: right;">Page 416</p> <p>1 the records personnel about the mechanism for 2 holds. I did not personally audit any compliance. 3 Q. Did you audit any of the cleanout? 4 Remember, we talked about the annual cleanout 5 procedure. Did you audit any cleanout notices or 6 documents documenting the cleanout procedures to 7 see if any records had been destroyed that were 8 under legal holds or retention schedules? 9 A. No. That was not part of my 10 investigation. 11 Q. Now, the 1999, let's start with the first 12 one here. Let me see if I can locate this. Here 13 we go. 14 (Whereupon, Plaintiff's Exhibit 32 was 15 marked for identification.) 16 BY MR. SWANSON: 17 Q. I'm handing you Exhibit Number 32 to your 18 deposition. And for the record, what is 19 Exhibit 32? 20 A. A document preservation notice dated 21 November 11, 1999. 22 Q. And that's the one in the Krushinski case; 23 correct? 24 A. Yes. 25 Q. And that is the first one that you're</p>	<p style="text-align: right;">Page 418</p> <p>1 recipients of this hold notice? 2 A. That was not part of my investigation. 3 Q. Does that information still exist as to 4 who the recipients were of the hold in 1999? 5 A. I don't know. 6 Q. In 1999, what was the policy of Johnson & 7 Johnson with respect to distribution of holds, if 8 it had one? 9 A. I can check my notes with respect to that. 10 I'm noting on page 34 in the Renay Lawson section, 11 simply that Renay would send holds and releases as 12 directed by legal and upload to Web site. Had 13 different distribution lists. 14 Q. And she had been there since 2009; 15 correct? It says nine years -- 16 A. Okay. 17 Q. -- at Consumer. 18 This is Renay Lawson, the records 19 information management lead; right? 20 A. Yes. 21 Q. Okay. 22 A. I have further information on page 36 from 23 Rosina Sheerin that both she and Renay would send 24 hold notices at different times and that they 25 maintained distribution lists based on a cover</p>
<p style="text-align: right;">Page 417</p> <p>1 aware of; true? 2 A. Yes. 3 Q. And this one was directed as pertaining to 4 Johnson's Baby Powder. It says that on the second 5 page of this. And it says on the first page that 6 it just -- in the first paragraph there it says 7 "JJCP" -- 8 That would be Johnson & Johnson Consumer 9 products; is that right? 10 A. That's my read. 11 Q. -- "is party to a lawsuit involving 12 allegations of manufacturing or design defect or 13 failure to warn in connection with the below 14 product." And it mentions Johnson's Baby Powder. 15 To which companies, Johnson & Johnson 16 companies, operating units, divisions was this 17 document preservation notice directed? 18 A. It's not specified. 19 Q. Do you have any information as to this 20 hold whether or not it applied, for example, to 21 operating units overseas such as in Hong Kong and 22 the Philippines? 23 A. I don't have information as to who it was 24 distributed to. 25 Q. Do you know any of the individual</p>	<p style="text-align: right;">Page 419</p> <p>1 page. 2 Q. Okay. And do you know if those 3 distribution lists still exist? 4 A. I know that I have seen distributions on 5 some of the hold notices. 6 Q. Okay. And we're going to go through each 7 one in a little bit, so we'll get to that, if 8 there's a distribution list. 9 With respect to 1999 Krushinski case hold, 10 you don't have a distribution list for that, do 11 you? 12 A. Correct. 13 Q. And again, as the Johnson & Johnson's 14 representative on this issue, this is the first 15 talc litigation hold that was issued in 1999; 16 correct? 17 A. Consumer talc. 18 Q. Consumer talc. 19 All right. So you're not aware of any -- 20 well, let me ask you this way: And not to get off 21 on another sort of substantive issues too much. 22 But do you have information that there were holds 23 related to talc that wasn't consumer talc? 24 A. No. 25 Q. If you look at your binder there, Tab 1C.</p>

<p style="text-align: right;">Page 420</p> <p>1 This is the January 7, 2000 document preservation 2 notice in the Barbara Bloch case. 3 Do you see that? 4 A. Yes. 5 Q. And this was, says "JJCPI, et al. is a 6 party to a lawsuit involving allegations of 7 manufacturing or design defect or failure to warn 8 in connection with the below product." 9 And, again, this is in regards to the 10 Johnson's Baby Powder; true? It's on the next 11 page there? Oh, you've got it in your summary. 12 A. Yes. Yes. 13 Q. And by the way, just to make this clear on 14 the record, "document preservation notice" means 15 the same thing as a legal hold notice; correct? 16 A. Generally, yes. 17 Q. And Johnson & Johnson at some point just 18 changed the language that they used to refer to 19 it? They called it -- later they called it a 20 "legal hold notice"; true? We can get to those 21 later. 22 So, as far as this one, do you know who -- 23 which operating units or companies of Johnson & 24 Johnson received that, whether or not it was 25 anybody beyond just Johnson & Johnson Consumer</p>	<p style="text-align: right;">Page 422</p> <p>1 Q. Can you give me a page number on that, 2 please? 3 A. Oh, yes. 29. Sure. 4 So Ms. Dodd spoke about the training that 5 was -- that was provided. 6 Q. Can you direct me to that, please? 7 A. Yes. The bottom of -- near the bottom of 8 page 1. "Training included legal hold, departing 9 associates, retention procedures, roles." 10 Q. And she was the -- she is this analyst 11 records management, J&J Consumer, Inc.; right? 12 A. Yes. 13 Q. And do you know -- she started in 2007 or 14 '8? 15 A. Yes. 16 Q. Do you know at what point those -- the 17 training started that she's referring to? 18 A. Not the exact start date, no. 19 Q. And do you know how -- do you have any 20 information about how far that training goes back 21 and whether there was any training in the year 22 2000 at the time of the Barbara Bloch case? 23 A. I don't have specifics on that. 24 Q. At Tab 1B there's a hold in the Hozeny -- 25 Hozeny case versus Johnson & Johnson Consumer</p>
<p style="text-align: right;">Page 421</p> <p>1 Products, Inc.? 2 A. I do not. 3 Q. Okay. And do you know to whom -- what 4 individuals received this notice? 5 A. I do not. 6 Q. Do you have any information about what 7 training was done of individuals about how to 8 effectuate this notice? 9 MR. COX: Object to the form. 10 THE WITNESS: I have a general 11 understanding from the records officer that there 12 was training in the records program and that that 13 included legal hold instructions. 14 BY MR. SWANSON: 15 Q. And did you say "records manager"? 16 A. Training in records management issues. 17 Q. Who was it that you were speaking to about 18 that issue? 19 A. Possibly Lisa Kaiser. Let me... 20 Q. Before I make you look that up -- and if 21 you need to look it up to get into the heart of 22 it, what did she tell you about what the training 23 was? 24 A. Actually, I'm looking at the Joann Dodd 25 information.</p>	<p style="text-align: right;">Page 423</p> <p>1 Companies, Inc. 2 Do you see that? 3 A. Yes. 4 Q. And, again, this is called the "document 5 preservation notice." The date is May 16, 2003. 6 And this is Exhibit 1B, for the record. 7 And what was -- this looks similar to 8 the '99 and 2000 holds that we've seen. But does 9 it -- it looks like it may add something 10 additional. Can you tell me what is the subject 11 of this hold? 12 A. You mean what is the -- the -- 13 Q. Well, what product was at issue and -- 14 A. It generally referred to talc products. 15 Q. And the basic language is the same, 16 correct, of the hold? As the holds we had 17 discussed for the 1999 and 2000 cases? 18 MR. COX: Object to the form. 19 BY MR. SWANSON: 20 Q. But then you get to the details of what 21 materials are to be held, and there's a bit more 22 detail. It's fleshed out a bit more; correct? 23 A. The language has evolved. There are eight 24 categories as opposed to four categories with 25 earlier notices. It is -- it is somewhat</p>

<p style="text-align: right;">Page 424</p> <p>1 different.</p> <p>2 Q. We had earlier -- I should hit on this now</p> <p>3 so I don't forget, but we had talked about talc</p> <p>4 samples. And in this 2003 hold looking at the</p> <p>5 list of materials that were subjects -- subject</p> <p>6 matters of documents to be preserved, did that</p> <p>7 include talc samples in 2003?</p> <p>8 A. I do not believe it did.</p> <p>9 Q. Okay. And just looking back quickly on</p> <p>10 this, the 1999 and 2000, those didn't include --</p> <p>11 wouldn't include talc samples either; correct?</p> <p>12 A. There is references to information about</p> <p>13 samples, not samples themselves.</p> <p>14 Q. Okay. Can you point me to that, under</p> <p>15 which?</p> <p>16 A. Under Section 4 in both the '99 and the</p> <p>17 2000 documents.</p> <p>18 Q. But not the samples themselves; true?</p> <p>19 A. Correct. And only those records about the</p> <p>20 samples pertaining to the event.</p> <p>21 Q. And the 2003 legal hold in the Hozeny</p> <p>22 case, and I apologize if I asked this, do you know</p> <p>23 if this applied to any overseas operating</p> <p>24 companies of Johnson & Johnson, like Johnson &</p> <p>25 Johnson Philippines or Johnson & Johnson Hong</p>	<p style="text-align: right;">Page 426</p> <p>1 Q. Can you take a look at that and, just for</p> <p>2 the record, is that the Deane Berg v. Johnson &</p> <p>3 Johnson Consumer Companies, et al. hold dated</p> <p>4 December 15, 2009?</p> <p>5 A. Yes.</p> <p>6 Q. And that's Exhibit 33. And this hold</p> <p>7 again is with respect to Johnson & Johnson's Baby</p> <p>8 Powder and this time it also specifically</p> <p>9 references Shower to Shower powder; right?</p> <p>10 A. Yes.</p> <p>11 Q. And Shower to Shower is another cosmetic</p> <p>12 talc product that Johnson & Johnson made; true?</p> <p>13 A. At the time, yes.</p> <p>14 Q. And this one in 2009 we get quite a bit</p> <p>15 more detail; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And there's even, it looks like a</p> <p>18 distribution list, is that right, in terms of what</p> <p>19 units it's distributed to?</p> <p>20 A. Yes.</p> <p>21 Q. And it indicates here in the units that</p> <p>22 this legal hold were issued to is -- are</p> <p>23 identified that they're checked and it looks like</p> <p>24 they're also highlighted in yellow; true?</p> <p>25 A. I see that, yes.</p>
<p style="text-align: right;">Page 425</p> <p>1 Kong?</p> <p>2 A. My general understanding is that it did</p> <p>3 not.</p> <p>4 Q. And your general understanding as to it</p> <p>5 not applying, would that be the same as to the</p> <p>6 1999 and 2000 holds, too?</p> <p>7 A. Yes.</p> <p>8 Q. And what's the source of that</p> <p>9 understanding?</p> <p>10 A. That information came from counsel.</p> <p>11 Q. Okay. And I believe the next hold is a</p> <p>12 2009 hold; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. You have a copy of that with you? I know</p> <p>15 I have it here somewhere.</p> <p>16 MR. COX: I have extra copies if you need.</p> <p>17 MR. SWANSON: That would be great, thanks,</p> <p>18 Chris. I'm sorry -- oh, wait. Is this it? I've</p> <p>19 got it. Yeah. Okay. Good. I have it. Thank</p> <p>20 you.</p> <p>21 Okay. I have marked as Exhibit 33 to your</p> <p>22 deposition this hold in the Berg case.</p> <p>23 (Whereupon, Plaintiff's Exhibit 33 was</p> <p>24 marked for identification.)</p> <p>25 BY MR. SWANSON:</p>	<p style="text-align: right;">Page 427</p> <p>1 Q. And that includes Johnson & Johnson</p> <p>2 Consumer Companies, Inc.; Johnson & Johnson</p> <p>3 Consumer and Personal Products Worldwide, Division</p> <p>4 of Johnson & Johnson Consumer Products, Inc. Then</p> <p>5 it says Johnson & Johnson Corporate, Corporate</p> <p>6 Communications, and then also under Corporate</p> <p>7 Consumer and Personal Care and Quality and</p> <p>8 Compliance World -- is that "Worldwide"? WW?</p> <p>9 A. Yes.</p> <p>10 Q. This notice was not issued to Johnson &</p> <p>11 Johnson Philippines, was it? Or Johnson & Johnson</p> <p>12 China?</p> <p>13 A. No.</p> <p>14 Q. Okay. Do we -- do you know who the</p> <p>15 individuals -- do you know -- there are identified</p> <p>16 Johnson & Johnson operating units and companies</p> <p>17 that were issued this legal hold notice. Do you</p> <p>18 know what individuals received it other than those</p> <p>19 listed as receiving this document on the first</p> <p>20 page, it looks like? And there's about, what,</p> <p>21 15 -- 15 to 20 individuals there listed.</p> <p>22 Do you see that?</p> <p>23 A. Yes. It would be under "attachments"?</p> <p>24 Q. Yeah.</p> <p>25 A. "Cc."</p>

<p style="text-align: right;">Page 428</p> <p>1 Q. Well, there's only, I guess, about --</p> <p>2 well, under "attachment," those are people who</p> <p>3 received this document preservation notice; is</p> <p>4 that right?</p> <p>5 MR. COX: Object to the form.</p> <p>6 THE WITNESS: I'm sorry. One more time,</p> <p>7 please.</p> <p>8 BY MR. SWANSON:</p> <p>9 Q. Under -- next to "cc," where it says the</p> <p>10 people who were copied, they received this;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. What about the other people in the</p> <p>14 right -- more to the right column? Did they</p> <p>15 receive it? What are they listed as here? Or do</p> <p>16 you have an understanding?</p> <p>17 A. Well, I would just generally conclude that</p> <p>18 this is a long cc list and they -- there is no --</p> <p>19 it appears to be in alphabetical order starting</p> <p>20 with Braunreuther going up to Will -- Will Wiley.</p> <p>21 Q. Do you know of anybody -- do you know of</p> <p>22 any other individuals received this notice other</p> <p>23 than these indicated here?</p> <p>24 A. Well, the recipients of the communication</p> <p>25 were Debbie Staneruck and Edith Mendez, and they</p>	<p style="text-align: right;">Page 430</p> <p>1 MR. SWANSON: 35 will be the hold in the</p> <p>2 Estrada case.</p> <p>3 (Whereupon, Plaintiff's Exhibit 35 was</p> <p>4 marked for identification.)</p> <p>5 MR. SWANSON: And 36 will be the 2014 hold</p> <p>6 in the State of Mississippi v. Johnson & Johnson</p> <p>7 and Johnson & Johnson Consumer Companies, Inc.</p> <p>8 case.</p> <p>9 (Whereupon, Plaintiff's Exhibit 36 was</p> <p>10 marked for identification.)</p> <p>11 BY MR. SWANSON:</p> <p>12 Q. And, again, if you look at these, and you</p> <p>13 can go ahead and look at them, each of these</p> <p>14 notices in 2014, they relate -- related to</p> <p>15 Johnson's Baby Powder and Shower to Shower</p> <p>16 products; correct?</p> <p>17 A. Well, Estrada is only baby powder.</p> <p>18 Q. Okay.</p> <p>19 A. The other two from 2014 mention both</p> <p>20 products.</p> <p>21 Q. Okay. Thank you.</p> <p>22 And, again, there's a recipient or a</p> <p>23 distribution list in terms of what operating units</p> <p>24 or companies received this, correct, these three</p> <p>25 holds?</p>
<p style="text-align: right;">Page 429</p> <p>1 were directed to distribute the notice companywide</p> <p>2 to the attached companies as well as anyone else</p> <p>3 that they may understand might be knowledgeable of</p> <p>4 these issues.</p> <p>5 Q. Okay. And when you say "distributed</p> <p>6 companywide," do you know in 2009 -- strike that.</p> <p>7 The next one that I want to ask you about</p> <p>8 is -- there were three different holds in 2014.</p> <p>9 Have you seen those?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And that would be the Chesteen</p> <p>12 case, Estrada, and the State of Mississippi;</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 Q. And these were all issued as a result of</p> <p>16 lawsuits against Johnson & Johnson Consumer</p> <p>17 Companies, Inc.?</p> <p>18 A. That's my understanding.</p> <p>19 MR. SWANSON: Okay. I'm not going to</p> <p>20 spend much time on these, but I do want to get</p> <p>21 them marked and attached.</p> <p>22 So 34 will be the hold in the Chesteen</p> <p>23 case.</p> <p>24 (Whereupon, Plaintiff's Exhibit 34 was</p> <p>25 marked for identification.)</p>	<p style="text-align: right;">Page 431</p> <p>1 A. Well, this is a sector-based distribution.</p> <p>2 Q. Okay. And these were just domestic</p> <p>3 companies that received these holds; correct?</p> <p>4 A. Yes.</p> <p>5 Q. So this was not issued to Johnson &</p> <p>6 Johnson Philippines or Johnson & Johnson Hong</p> <p>7 Kong; correct?</p> <p>8 A. Correct.</p> <p>9 Q. Or Johnson & Johnson Korea, correct, if</p> <p>10 there was a Johnson & Johnson --</p> <p>11 A. Correct.</p> <p>12 Q. -- Korea at that time?</p> <p>13 MR. SWANSON: And then finally we have</p> <p>14 here a 2017 hold, which we'll mark as Exhibit 37.</p> <p>15 (Whereupon, Plaintiff's Exhibit 37 was</p> <p>16 marked for identification.)</p> <p>17 BY MR. SWANSON:</p> <p>18 Q. I'll go ahead and hand you that one. And</p> <p>19 this is what you've referred to in Exhibit 21 your</p> <p>20 summary list of holds as talc asbestos. You say</p> <p>21 "PL litigation."</p> <p>22 What does that stand for?</p> <p>23 MR. COX: Object to the form.</p> <p>24 THE WITNESS: My understanding is that</p> <p>25 that is a product liability. But this is not that</p>

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1 one.

2 BY MR. SWANSON:

3 Q. Oh, this isn't. Okay. Well, this is the

4 talc ovarian cancer litigation hold that I handed

5 you; correct?

6 A. Yes.

7 MR. SWANSON: Chris, do you have a copy of

8 this other one?

9 MR. COX: It should be in the binder, 1C.

10 MR. SWANSON: Thank you.

11 MR. COX: Sure.

12 MR. SWANSON: Appreciate that.

13 BY MR. SWANSON:

14 Q. Well, let's just -- since I've attached

15 this 37, this legal hold, was it -- that's

16 attached as 37 as a talc ovarian cancer litigation

17 hold; correct?

18 A. Yes.

19 Q. Do you know what year -- is this the

20 current -- this is the current one?

21 A. This is the most recent one for ovarian

22 cancer of which I'm aware.

23 Q. Okay. And if you look at Exhibit 1A to

24 your deposition, which is Tab 1A, we can go to the

25 one that you referred to in your list as the talc

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1 asbestos litigation hold.

2 Do you have that in front of you?

3 A. Yes, I do.

4 Q. Is this the current legal hold for talc

5 asbestos litigation?

6 A. This is the most recent one I've received

7 that I'm aware of.

8 Q. And I don't know if you use this word, but

9 I think you indicated earlier that your

10 understanding was this was sort of an attempt to

11 consolidate the various holds; is that right?

12 A. With respect to those mesothelioma-related

13 matters, yes.

14 Q. Now, in terms of what information is being

15 held either under ovarian talc litigation hold or

16 a case that was a talcosis case like the

17 Krushinski case, these are all holds since 1999

18 that we're talking about that are related to the

19 Johnson & Johnson's Baby Powder and Shower to

20 Shower; correct?

21 A. Yes.

22 Q. And -- so in terms of the sort of universe

23 of documents, types of documents and records that

24 would be held, it's pretty much the same universe,

25 correct --

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1 MR. COX: Object to the form.

2 BY MR. SWANSON:

3 Q. -- from what your evaluation of these

4 holds has been in terms of looking at what records

5 and information are supposed to be held?

6 MR. COX: Object to the form.

7 THE WITNESS: I -- I would concur that the

8 body of documents being held generally relates to

9 both families of cases. I would not agree that

10 every document from one family is connected to the

11 other family of cases. I -- I'm not competent to

12 decide that, but they are being held. Both --

13 both sets of holds concern a body of information.

14 BY MR. SWANSON:

15 Q. Right. And the body of information is

16 about -- in terms of what's actually being held,

17 people are being instructed to hold and preserve,

18 it's essentially almost the exact same body of

19 information; correct?

20 A. Yes.

21 MR. COX: Object to the form.

22 BY MR. SWANSON:

23 Q. Okay. Now, the 2017 talc asbestos

24 litigation hold is the first one that specifically

25 references talc, but there were prior holds that

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1 were issued in cases where the injury being

2 alleged was mesothelioma; correct?

3 A. I'm sorry. The first one that references

4 talc?

5 Q. No. Did I say that? If so.

6 It's the first one that specifically

7 references asbestos; is that right? From what you

8 saw?

9 A. You know, I don't recall that. I did not

10 look for the word "asbestos" in earlier holds.

11 Q. Okay. But in any case, regardless, the

12 2000 and 2002 to 2003 holds were done in cases

13 where there was an allegation of mesothelioma by

14 the plaintiff; right?

15 A. Yes.

16 Q. And this talc asbestos litigation hold,

17 the current one that we have here, or the most

18 recent one you're aware of, what Johnson & Johnson

19 entities is that one directed to?

20 A. This hold notice is directed at individual

21 custodians rather than specific entities.

22 Q. And is there a list of custodians anywhere

23 that you've seen that this is directed to?

24 A. Not that I've seen.

25 Q. Have you -- do you have information about

<p style="text-align: right;">Page 436</p> <p>1 at which Johnson & Johnson -- you know, operating 2 units, subsidiaries, divisions, companies -- at 3 which of those companies individuals were 4 recipients of this current hold notice? 5 A. Only that the legal department has made a 6 determination of the appropriate custodians to 7 deliver the notice to. 8 Q. Do you know if any of those custodians are 9 at Johnson & Johnson Philippines? 10 A. Yes. 11 Q. Okay. And as far as you -- and who is 12 that individual or individuals at Johnson & 13 Johnson Philippines? 14 A. I -- I'm not aware. 15 Q. But you got information from some source 16 that Johnson & Johnson -- somebody at Johnson & 17 Johnson Philippines received this notice; is that 18 correct? 19 A. Yes. 20 Q. And what's the source of that information? 21 A. You mean how did I learn that? 22 Q. Yes. 23 A. From counsel. 24 Q. Okay. And based on our review of the 25 prior notices, was this the first notice that</p>	<p style="text-align: right;">Page 438</p> <p>1 litigation -- talc asbestos litigation hold, go to 2 Johnson & Johnson Hong Kong? 3 A. Individuals in Hong Kong. 4 Q. And where did you learn that? 5 A. From counsel. 6 Q. Did it go to Johnson & Johnson China? 7 A. I don't know. 8 Q. Okay. And when did it go to Johnson & 9 Johnson Philippines? 10 A. Well, as I mentioned, it didn't go to an 11 entity; it went to individuals in those areas. 12 And that was on May 26th of 2017. 13 Q. And was the -- is that the date that that 14 hold was issued? 15 A. Yes. 16 Q. And do you specifically know that it went 17 to those individuals on that date, at Johnson & 18 Johnson Philippines and Hong Kong? 19 A. I know that the -- the -- I don't know 20 that specifically. I know that the hold -- the 21 custodians were notified on that date. I have no 22 reason to believe that the Philippines or any 23 other area were treated differently. 24 MR. SWANSON: Are you okay to continue 25 some more?</p>
<p style="text-align: right;">Page 437</p> <p>1 Johnson & Johnson issued legal hold notice for 2 talc litigation issued to Johnson & Johnson 3 Philippines? 4 A. It's the first I'm aware of. 5 Q. Now, you saw in the 2014, in the prior 6 ones going back, there was no indication that it 7 went to Johnson & Johnson Philippines. In fact, 8 the distribution list from 2014 and 2009 9 specifically showed that it was not distributed to 10 Johnson & Johnson Philippines; correct? 11 A. In 2009 it specifically showed that. In 12 2014 it simply denoted "US," "OUS." It didn't 13 have a country-by-country listing. 14 Q. Okay. If you look at -- if you don't have 15 those in front of you -- I think you do. 16 If you look at 34, for example, 35? 17 A. Yes. 18 Q. It says "U.S. only"; right? 19 A. Correct. 20 Q. So those don't -- they did not go to 21 Johnson & Johnson Philippines; correct? 22 A. They didn't go outside the U.S. 23 Q. Right. That was all I was confirming. 24 Okay. And that would be the same -- did this 25 2' -- the current Johnson & Johnson talc</p>	<p style="text-align: right;">Page 439</p> <p>1 I mean, you guys tell me, because I'm -- 2 I'm moving right along, but. 3 THE WITNESS: I thought that was a good 4 stopping point, but I -- I -- 5 MR. SWANSON: Well, I mean, you know, 6 since we do have a little bit of an issue here 7 about when we're going to finish tomorrow, I 8 certainly -- 9 MR. COX: Are you about to start a new 10 topic? 11 MR. SWANSON: It's related, but it's 12 getting into an area that's going to take some 13 time. 14 MR. COX: Why don't we go off the record, 15 let's talk for a couple minutes, and we'll see. 16 MR. SWANSON: All right. Let's go off the 17 record. 18 THE VIDEOGRAPHER: Off the record at 5:47. 19 (Off the record.) 20 THE VIDEOGRAPHER: On the record at 6:01. 21 You may continue, Counsel. 22 MR. SWANSON: So we have an agreement 23 about tomorrow's deposition and the conclusion of 24 the deposition, and Mr. Cox will state that for 25 the record, and if there's anything I disagree</p>

<div>Page 440</div> <div>1 with, we'll hammer it out.</div> <div>2 MR. COX: Yes. First, the Johnson &</div> <div>3 Johnson defendants object to the continuation of</div> <div>4 the deposition given the two days of testimony of</div> <div>5 this witness has already sat for, given the number</div> <div>6 and nature of the subject matters for which this</div> <div>7 witness has been tendered, and the limited</div> <div>8 relevance to the claimed defenses in the case, we</div> <div>9 don't believe additional time is necessary or</div> <div>10 appropriate.</div> <div>11 Nevertheless, in the spirit of compromise,</div> <div>12 as Mr. Swanson indicated, because the witness and</div> <div>13 counsel are here, we've agreed to continue the</div> <div>14 deposition tomorrow under the following</div> <div>15 circumstances: The deposition will begin at</div> <div>16 9:00 a.m. There will be reasonable breaks.</div> <div>17 Plaintiffs will conclude their questioning by</div> <div>18 1:45 p.m. at which time the J&J defendants will</div> <div>19 have an opportunity to ask direct -- pose the</div> <div>20 direct testimony from the witness and after which</div> <div>21 plaintiffs will be permitted a recross that's</div> <div>22 limited to the issues raised on the direct.</div> <div>23 MR. SWANSON: That's our agreement, yes.</div> <div>24 We can go off the record.</div> <div>25 THE VIDEOGRAPHER: The marks the end of</div>	<div>SIGNATURE OF DEPONENT</div> <div>1</div> <div>2</div> <div>3 I, the undersigned, JAMES PETER MITTENTHAL, do</div> <div>4 hereby certify that I have read the foregoing</div> <div>5 deposition and find it to be a true and accurate</div> <div>6 transcription of my testimony, with the following</div> <div>7 corrections, if any:</div> <div>8</div> <div>9 PAGE LINE CHANGE</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>JAMES PETER MITTENTHAL, Date</div>
<div>Page 441</div> <div>1 Media Number 5 in the deposition of James</div> <div>2 Mittenenthal and we are going off the record and</div> <div>3 adjourning for the day at 6:02 p.m.</div> <div>4</div> <div>5 (Whereupon, the deposition was</div> <div>6 adjourned at 6:02 p.m.)</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 443</div> <div>1 STATE OF CALIFORNIA)</div> <div>2) ss.</div> <div>3 COUNTY OF ALAMEDA)</div> <div>4</div> <div>5 I, EARLY LANGLEY, a Certified Shorthand</div> <div>6 Reporter, State of California, do hereby certify:</div> <div>7 That JAMES PETER MITTENTHAL, in the foregoing</div> <div>8 deposition named, was present and by me sworn as a</div> <div>9 witness in the above-entitled action at the time and</div> <div>10 place therein specified;</div> <div>11 That said deposition was taken before me at</div> <div>12 said time and place, and was taken down in shorthand by</div> <div>13 me, a Certified Shorthand Reporter of the State of</div> <div>14 California, and was thereafter transcribed into</div> <div>15 typewriting, and that the foregoing transcript</div> <div>16 constitutes a full, true and correct report of said</div> <div>17 deposition and of the proceedings that took place;</div> <div>18 IN WITNESS WHEREOF, I have hereunder subscribed my hand</div> <div>19 on October 22, 2018.</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>EARLY LANGLEY, CSR NO. 3537</div> <div>State of California</div>

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Exhibit 161

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF NEW JERSEY

3 - - -

4
5 IN RE: JOHNSON & :
6 JOHNSON TALCUM POWDER :
7 PRODUCTS MARKETING, :
8 SALES PRACTICES, AND : NO. 16-2738
9 PRODUCTS LIABILITY : (FLW) (LHG)
10 LITIGATION :
11 :
12 THIS DOCUMENT RELATES :
13 TO ALL CASES :

14 - - -

15 July 12, 2018

16 - - -

17 Videotaped deposition of
18 MARGARET M. GUROWITZ, taken pursuant to
19 notice, was held at the law offices of
20 Drinker Biddle & Reath, 105 College Road
21 East, Princeton, New Jersey, beginning at
22 9:29 a.m., on the above date, before
23 Michelle L. Gray, a Registered
24 Professional Reporter, Certified
 Shorthand Reporter, Certified Realtime
 Reporter, and Notary Public.

 - - -

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VIDEOTAPE TECHNICIAN:
Devyn Mulholland

1 - - -
2 I N D E X
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4

Testimony of: MARGARET M. GUROWITZ

By Mr. Lapinski 18, 371

By Ms. Fournier 353

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5	NO.	DESCRIPTION	PAGE
6	Gurowitz-54	Johnson's	302
7		Body Powder	
8		Copy of Photograph	
9		JBP-175	
10	Gurowitz-55	Johnson's	305
11		Body Powder	
12		Copy of Photograph	
13		JBP-177	
14	Gurowitz-56	Johnson's	306
15		Body Powder	
16		Copy of Photograph	
17		JBP-183	
18	Gurowitz-57	Johnson's	307
19		Body Powder	
20		Copy of Photograph	
21		JBP-190	
22	Gurowitz-58	Johnson's	309
23		Body Powder	
24		Copy of Photograph	
		JBP-215	
	Gurowitz-59	Johnson's	310
		Body Powder	
		Copy of Photograph	
		JBP-232	
	Gurowitz-60	Johnson's	312
		Body Powder	
		Copy of Photograph	
		JBP-237	

1		- - -	
2		E X H I B I T S (Cont'd.)	
3		- - -	
4			
5	NO.	DESCRIPTION	PAGE
6	Gurowitz-61	Johnson's	313
		Body Powder	
7		Copy of Photograph	
		JBP-294	
8			
	Gurowitz-62	Johnson's	318
9		Body Powder	
		Copy of Photograph	
10		JBP-295	
11	Gurowitz-63	Shower to Shower	320
		Copy of Photograph	
12		STS001	
13	Gurowitz-64	Shower to Shower	323
		Copy of Photograph	
14		STS002	
15	Gurowitz-65	Shower to Shower	325
		Copy of Photograph	
16		STS003	
17	Gurowitz-66	Shower to Shower	328
		Copy of Photograph	
18		STS004	
19	Gurowitz-67	Shower to Shower	331
		Copy of Photograph	
20		STS005	
21	Gurowitz-68	Shower to Shower	332
		Copy of Photograph	
22		STS011	
23			
24			

1	-	-	-
2	E X H I B I T S (Cont'd.)		
3	-	-	-
4			
5	NO.	DESCRIPTION	PAGE
6	Gurowitz-69	Shower to Shower	334
7		Copy of Photograph	
8		STS012	
9	Gurowitz-70	Shower to Shower	335
10		Copy of Photograph	
11		STS013	
12	Gurowitz-71	Shower to Shower	338
13		Copy of Photograph	
14		STS016	
15	Gurowitz-72	Shower to Shower	340
16		Copy of Photograph	
17		STS017	
18	Gurowitz-73	Shower to Shower	341
19		Copy of Photograph	
20		STS018	
21	Gurowitz-74	Shower to Shower	342
22		Copy of Photograph	
23		STS021	
24	Gurowitz-75	Shower to Shower	342
		Copy of Photograph	
		STS031	
	Gurowitz-76	Leahy Product	345
		And Museum Number	
		JNJ 000660416-80	

10
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4
5 Direction to Witness Not to Answer
6 PAGE LINE
None.

7
8 Request for Production of Documents
9 PAGE LINE
None.

10
11 Stipulations
12 PAGE LINE
 None.

13
14 Questions Marked
15 PAGE LINE
None.

1 THE VIDEOGRAPHER: We are
2 now on the record.

3 My name is Devyn Mulholland.
4 I'm a videographer for Golkow
5 Litigation Services.

6 Today's date is July 12,
7 2018. The time is 9:29 a.m.

8 This video deposition is
9 being held in Princeton, New
10 Jersey, in the matter of Talcum
11 Powder Litigation MDL.

12 The deponent is Margaret
13 Gurowitz.

14 Counsel will be noted on the
15 stenographic record.

16 The court reporter is
17 Michelle Gray and will now swear
18 in the witness.

19 - - -

20 ... MARGARET M. GUROWITZ,
21 having been first duly sworn, was
22 examined and testified as follows:

23 - - -

24 MS. FOURNIER: For purposes

1 of the record, Ms. Gurowitz is
2 being produced today pursuant to a
3 March set of deposition notices
4 served by the Plaintiffs' Steering
5 Committee as amended, adjusted,
6 whatever is the right word, by
7 both the Court and the agreement
8 of the parties.

9 She will be representing
10 both J&J and JJCI today, and she
11 is being presented on Topic 3.4.

12 MR. LAPINSKI: You just took
13 three quarters of my outline.

14 - - -

15 EXAMINATION

16 - - -

17 BY MR. LAPINSKI:

18 Q. Good morning, Ms. Gurowitz.
19 How are you this morning?

20 A. Good.

21 Q. I introduced myself to you
22 earlier today. My name is Dan Lapinski,
23 and I'm here on behalf of the Plaintiffs'
24 Steering Committee.

1 MR. LAPINSKI: This
2 deposition is being taken pursuant
3 to the February 6, 2018 order of
4 Special Master Pisano and
5 subsequent modifications to that
6 order and on topics permitted to
7 be discovered, which include
8 composition, testing, sampling and
9 bias.

10 The deposition is also being
11 taken pursuant to the Plaintiffs'
12 Steering Committee's second
13 amended notice of 30(b)(6)
14 depositions served on defendants
15 Johnson & Johnson and Johnson &
16 Johnson Consumer Incorporated.

17 The Plaintiffs' Steering
18 Committee reserves the right to
19 notice and conduct follow-up
20 depositions, including depositions
21 of individual witnesses identified
22 during this 30(b)(6) deposition
23 and on topics discussed by
24 Ms. Gurowitz.

1 Ms. Gurowitz has been
2 designated to testify today in
3 response to deposition notices
4 served upon both by Johnson &
5 Johnson and Johnson & Johnson
6 Consumer, and it's our expectation
7 that her testimony will be binding
8 upon both defendants.

9 To the extent Ms. Gurowitz
10 is unable to offer testimony as to
11 the conduct of one or both of the
12 J&J defendants, Plaintiffs'
13 Steering Committee reserves the
14 right to request a supplemental
15 deposition, so --

16 MS. FOURNIER: Can I add one
17 thing?

18 MR. LAPINSKI: You can.

19 MS. FOURNIER: In response
20 to the mention of the amended
21 notices, I just want to note for
22 the record our ongoing objection
23 to the definition and specifically
24 the definition of asbestos that

1 was added into the second notice.
2 I don't believe that will have any
3 impact on this particular topic
4 today, but good to note for the
5 record.

6 MR. LAPINSKI: Very good.

7 BY MR. LAPINSKI:

8 Q. So now we're -- now we're
9 set, Ms. Gurowitz. Good morning. Have
10 you ever been deposed before?

11 A. No.

12 Q. Okay. I'm going to give you
13 a little bit of background and
14 instruction. This is just a question and
15 answer session that we're -- we're going
16 to be involved in today.

17 We're on video, but more
18 importantly, as we discussed a little
19 while ago, everything that's said is
20 being taken down stenographically. So
21 there's a couple different things that we
22 need to keep in consideration because of
23 that.

24 One, make sure that all of

1 your answers are verbal answers so that
2 the court reporter is able to take them
3 down.

4 Try and speak slowly and
5 clearly, and as you'll see as the day
6 goes by, I can't do that. I'm from New
7 Jersey, so I speak very quickly.

8 I'm going to assume that if
9 I ask a question and you answer it, that
10 you understood my question, so that if
11 for any reason you're not sure of a
12 question that I asked, please ask me to
13 repeat or rephrase the question. Is that
14 understood?

15 A. Yes.

16 Q. Very good. We're going to
17 try not to speak over each other as well.
18 If I'm asking a question, even if you can
19 anticipate the answer, please try to give
20 me an opportunity to finish it, and I
21 will try to do the same as far as your
22 answers are concerned, okay.

23 A. Yes.

24 Q. This is not an endurance

1 contest, it's not a marathon. If for any
2 reason you need a break, please let me
3 know, and then at an appropriate time
4 we'll make arrangements to be able to
5 take a break. Okay?

6 Ms. Gurowitz, I'm going to
7 hand to you what's been marked as
8 Exhibit 1.

9 (Document marked for
10 identification as Exhibit
11 Gurowitz-1.)

12 BY MR. LAPINSKI:

13 Q. And, Ms. Gurowitz, if you
14 would take that deposition -- the
15 Exhibit 1, and just look at it for a
16 minute.

17 This document is the
18 Plaintiffs' Steering Committee's second
19 amended notice of 30(b)(6) deposition of
20 defendant Johnson & Johnson. I'm going
21 to ask you if you've seen that deposition
22 notice before.

23 A. I have seen something
24 similar. I don't know that I've seen

1 this exact one.

2 Q. Okay. And do you recall
3 when the first time was that you saw that
4 notice?

5 A. It was a little bit ago,
6 maybe a week or two.

7 Q. Okay. And where did you
8 receive that document from?

9 A. I received it from Kristen.
10 (Document marked for
11 identification as Exhibit
12 Gurowitz-2.)

13 BY MR. LAPINSKI:

14 Q. I'm also going to now hand
15 you what has been marked as Exhibit 2.

16 Actually, if I could take
17 that back for a second.

18 A. Sure.

19 Q. I think what I did was --
20 I'm going to hand to you what I've marked
21 as Exhibit 2 and ask you to take a look
22 at that for a minute.

23 And Exhibit 2 is the
24 Plaintiffs' Steering Committee's second

1 amended notice of 30(b)(6) deposition
2 from defendant Johnson & Johnson Consumer
3 Incorporated.

4 Ms. Gurowitz, have you seen
5 that document before?

6 A. I have seen the back part of
7 this document. In terms of the front
8 part, I'm not sure how it differs from
9 the first one.

10 Q. When you say the back part
11 of the document, what are you referring
12 to?

13 A. The listing of all the
14 samples.

15 Q. Okay. And the front part,
16 you're not sure whether you've seen the
17 front part before?

18 A. Correct.

19 Q. Okay. Ms. Gurowitz, you
20 understand that you're testifying here
21 today on both -- on behalf of both
22 defendant Johnson & Johnson and defendant
23 Johnson & Johnson Consumer Incorporated?

24 A. Yes, I understand.

1 Q. And your testimony is being
2 offered today in your capacity as a
3 corporate representative of both of those
4 defendants, correct?

5 A. Correct.

6 Q. You understand that you're
7 not testifying here today as an
8 individual?

9 A. I understand that.

10 Q. Okay. And you understand
11 that your testimony today will be binding
12 upon both of those defendants?

13 A. I understand.

14 Q. As we move forward generally
15 I'll be referring to J&J or the Johnson &
16 Johnson defendants. And unless I
17 distinguish otherwise, can we just agree
18 that when I refer to J&J or I refer
19 Johnson & Johnson defendants, I'm
20 referring to both of the defendants
21 collectively?

22 A. Yes.

23 Q. Okay. And what I would ask
24 is that unless -- unless you distinguish

1 otherwise, I'm going to assume that your
2 references are references that relate to
3 both of the defendants. Is that a fair
4 assumption?

5 A. Yes.

6 Q. Okay. And then I would just
7 ask you if for any reason your answer is
8 going to be specific to Johnson & Johnson
9 or specific to Johnson & Johnson Consumer
10 Incorporated, that you let me know that
11 the response is specific to one of those
12 defendants.

13 A. I understand.

14 Q. Thank you. We're also going
15 to be talking today about talcum powder
16 and talcum powder products. And in
17 regard to this deposition, I'd like to
18 have an understanding, as long as you'll
19 agree, that when we reference talcum
20 powder products we're talking about
21 Johnson's Baby Powder and Johnson's
22 Shower to Shower product.

23 A. I understand.

24 Q. Okay. To the extent that

1 there is going to be discussion about a
2 single product, I will try to make clear
3 that I'm talking about a particular
4 product and I would ask that you do the
5 same, if that's okay.

6 A. I understand.

7 Q. If you would look at Page 1
8 of Exhibit 1. At the bottom of Page 1 it
9 has your name listed as a witness,
10 Ms. Gurowitz.

11 Do you see that?

12 A. Yes.

13 Q. And are you here today to
14 testify only as to Topic 3.4 of that
15 deposition notice?

16 A. Yes.

17 Q. Okay. And if you would
18 please turn to Page 17 of that deposition
19 notice. At the bottom of Page 17 if you
20 would look at Number 4, chain of custody
21 for identified samples. Are you here
22 today to testify as to the storage and
23 chain of custody for any and all samples
24 that have been identified as being in

1 defendant's possession?

2 A. Yes.

3 (Document marked for
4 identification as Exhibit
5 Gurowitz-3.)

6 BY MR. LAPINSKI:

7 Q. Ms. Gurowitz, I'm handing
8 you a document that has been marked as
9 Exhibit 3. And if you would please take
10 a minute to just review that document.
11 Exhibit 3 is the January 31st, 2018
12 agreed order and stipulation regarding
13 the Johnson & Johnson defendants'
14 production of talcum powder products and
15 talc samples.

16 If you'd let me know when
17 you're done reviewing that document.

18 A. Sure. Okay, I've reviewed
19 it.

20 Q. Very good. Is this the
21 first time that you've seen that
22 document?

23 A. Yes.

24 Q. Okay. Do you have an

1 understanding as to what that document
2 is?

3 A. Yes.

4 Q. Okay. What's your
5 understanding as to what that document
6 is?

7 A. My understanding is that
8 this document sets forth the process by
9 which identified samples of historic talc
10 products that have been discovered would
11 be sent to a lab and then divided. And
12 it talks about the presentation -- the
13 preservation of those samples, the
14 original containers, et cetera, et
15 cetera.

16 Q. Okay. Now at the back of
17 the order, Exhibit 3, there is a
18 list of -- there's a list of samples.
19 And what I'm going to represent to you is
20 that the list of samples that is
21 contained within the order is the same
22 list of samples that is in Exhibit 1, the
23 deposition notice for Johnson & Johnson
24 and 2, the deposition notice for

1 Johnson & Johnson Consumer Incorporated,
2 okay?

3 A. Yes.

4 Q. And those three lists are
5 the same. We're going to be dealing with
6 the list today, which I'd like to just
7 refer to it as the sample list if that's
8 okay, unless you have a different phrase
9 or different term that you use for it?

10 A. No, that's fine.

11 Q. Okay. In regard to the
12 sample list, did you play any role in
13 preparing that sample list?

14 A. I prepared a role in
15 preparing part of that sample list.

16 Q. And what part of that sample
17 list did you play a role in preparing?

18 A. That is the part of the
19 sample list that has as the leftmost
20 column museum number.

21 Q. And am I correct that the
22 section that has -- the section that
23 deals with museum number would actually
24 be Exhibit 2 of the sample list?

1 A. I'm not sure where it says
2 that.

3 Q. Well, it -- the prior page
4 that you were just looking at --

5 A. Exhibit 2.

6 Q. -- says Exhibit 2. And just
7 between you and I for purposes of today,
8 there's confusing marks all over these
9 things. Sometimes it's Exhibit 1,
10 sometimes it's Exhibit 2, A, B. But
11 we're going to try to stay on the same
12 page.

13 The important thing as far
14 as the current question is concerned, you
15 were responsible for -- strike that.

16 You played a role in
17 preparing the list that at the top says,
18 "Supplemental inventory of agreed upon
19 museum samples"?

20 A. Correct.

21 Q. Now, staying with that list
22 for now, could you please tell me the
23 purpose of the museum number that's on
24 the left-hand side. And specifically, as

1 an example, if you go down to the fifth
2 entry, which is 2014.001.0086.

3 Do you see that?

4 A. I see that.

5 So in -- in 2014 and 2015,
6 we had the collection of artifacts,
7 items, in the corporate archives museum
8 collection professionally catalogued for
9 the first time ever by a team of
10 professional archivists. It was part of
11 our project to restore the Johnson &
12 Johnson museum.

13 So those numbers represent
14 catalogue numbers, individual catalogue
15 numbers, so we can identify each artifact
16 in a new database that was created. The
17 2014 at the beginning represents the year
18 in which that artifact was catalogued.
19 Some of them will have a 2014 in the
20 front. Some of them will have a 2015
21 that represents the years 2014 and 2015.

22 Q. Okay. In regard to the
23 .001, what is the significance of that
24 number?

1 A. That is -- I looked back at
2 the documents that the archivists -- when
3 they created the numbers. I couldn't
4 find anything that documented the
5 significance of that number. It's just a
6 cataloguing system they used.

7 Q. And then how about the last
8 four digits set of numbers, and in the
9 example we're looking at it's .0086?

10 A. The last four digits
11 represent the individual -- the
12 individual unique catalogue number for
13 each particular item in the collection.
14 So that's -- that would be how we can
15 find it. So if you're looking for item
16 .0086, I could look that up in the
17 database and see where it was stored and
18 be able to access it.

19 Q. You just referred to a
20 database. Could you give me some more
21 detail as to the database you're
22 referring to?

23 A. It's actually an online
24 system that is used by small and midsize

1 museums to manage their collections. So
2 Johnson & Johnson has a contract with
3 them. And we utilize that software to
4 manage our collection.

5 Q. And for how long have you
6 been using that software?

7 A. Since about 2016 maybe.

8 Q. And was there any type of
9 software system used prior to 2016 in
10 order for Johnson & Johnson to manage
11 their archives?

12 A. There was not.

13 Q. What's the name of that
14 software system?

15 A. It's called TMS, which
16 stands for The Museum System.

17 Q. Ms. Gurowitz, what was the
18 role that you played in compiling this
19 list, this section of the sample list
20 that you said you played a role in?

21 A. This section. I was asked
22 to locate any Johnson's Baby Powder or
23 Shower to Shower products that were in
24 the corporate archives collection. So I

1 used key word searches to find them. And
2 these are the items that were identified.

3 Q. Can you explain to me what
4 the corporate archives collection is?

5 A. The corporate archives
6 collection is a collection of physical
7 artifacts which would be historical
8 products and objects, and also paper
9 artifacts that have been in our museum
10 building for many, many decades.

11 Q. When you did your -- when
12 you did your search, what keywords did
13 you use --

14 A. Johnson --

15 Q. -- to conduct your search?

16 A. Johnson's Baby Powder, Baby
17 Powder, JBP, Shower to Shower, and STS.

18 Q. You had also referenced
19 earlier that you had archive consultants
20 who helped you to develop your inventory
21 and archive list; is that correct?

22 A. That is correct.

23 Q. What was the name of those
24 archive consultants?

1 A. It's a company called
2 History Associates.

3 Q. And do you know where
4 they're based?

5 A. They're based somewhere down
6 around the Washington D.C. area.

7 Q. When you conducted your
8 search for samples that are included in
9 the list that you prepared, did your
10 search for samples go beyond the
11 Johnson & Johnson archive collection?

12 A. My particular search did
13 not. But the general search did.

14 Q. And what is your
15 understanding of what the general search
16 was?

17 A. The general search was -- a
18 request had gone out to locate any other
19 samples that might be in existence. And
20 so a search was conducted, I believe by
21 our law department initially, and
22 additional samples were discovered that
23 had been in offsite storage. There are
24 also samples from PTI, which is the

1 contract manufacturer for Johnson's Baby
2 Powder.

3 Q. Are you aware of any samples
4 other than the offsite samples that you
5 just referred to?

6 A. I am not.

7 Q. Were there any -- are you
8 aware of any samples that may have been
9 produced by other departments within
10 Johnson & Johnson that were not in any
11 type of offsite storage?

12 A. If I might ask, are you
13 asking about samples that are not part of
14 this list?

15 Q. Well, let's break that out.
16 First of all, in regard to samples that
17 are included on this list, are you aware
18 of any samples that were included on this
19 list that came from Johnson & Johnson
20 organizations other than the archives and
21 other than offsite storage?

22 A. There are a few. There are
23 four samples that came from a retired
24 employee in the United Kingdom.

1 Q. Would they be the Hopkins
2 samples?

3 A. Yes.

4 Q. Other than the Hopkins
5 samples, are you aware of samples coming
6 from anywhere else?

7 A. There are samples identified
8 that did come from offsite storage.
9 They're not finished products. They're
10 rocks. I -- in doing research to try to
11 track their origins, I understand that
12 before they went into offsite storage,
13 some of them were brought -- were brought
14 back to Johnson & Johnson Consumer by the
15 daughter of an employee who passed away
16 who had a collection of rocks in his
17 home.

18 Q. Are you able to identify
19 those samples that were brought back to
20 Johnson & Johnson by the daughter of a
21 former employee?

22 A. Not specifically. But they
23 would be among the items listed on the
24 offsite storage list as rocks.

1 Q. And are you aware of this
2 individual bringing any samples back to
3 Johnson & Johnson other than rocks?

4 A. From my conversation, it was
5 relayed to me that his daughter brought
6 rocks back. But he -- there may have
7 been some product samples stored in his
8 area that never left the company, but
9 they would have been part of the offsite
10 storage list.

11 Q. But you have no knowledge of
12 any specific sample that would have been
13 stored in his work area?

14 A. Let me -- actually, if I can
15 look through the list, I can see what --

16 Q. Sure. And as you look
17 through that list, are you looking
18 through the museum list or are you
19 looking through the offsite list?

20 A. I'm looking through the
21 offsite list.

22 Most of them I marked by
23 department, research and development, are
24 the rocks. But there are one, two,

1 three, four, five samples that are
2 labeled Johnson's Baby Powder that came
3 from research and development.

4 I was not able to -- we
5 were -- in my research into the origins
6 of these, I was not -- not able to track
7 down exactly who owned those samples
8 because it's beyond the memory of anyone
9 who is still at Johnson & Johnson. But
10 it was in the area, the research and
11 development area, the area that this
12 employee who passed away had been in.

13 And then they moved offices,
14 everything was boxed up, and then later
15 there was construction and everything was
16 sent to offsite storage. So there are --
17 there are a very few sample bottles from
18 that.

19 Q. So let me try and clarify
20 what was just said here. First of all,
21 in regard to the specific samples that
22 you're referring to, on the list there
23 are sample numbers. Can you identify for
24 me the sample numbers that you're

1 referring to?

2 A. Yes. The sample numbers are
3 JBP-001, 002, 003, 004, and 006.

4 Q. And it's your understanding
5 that those five samples are samples that
6 were provided by the daughter of a former
7 employee, correct?

8 MS. FOURNIER: Objection.

9 THE WITNESS: No. That is
10 not correct. It is my
11 understanding that these are
12 samples that were found in the
13 research and development area, the
14 area of the building that research
15 and development had occupied and
16 had been sent to offsite storage.

17 BY MR. LAPINSKI:

18 Q. The former employee who you
19 referenced earlier, what was that
20 employee's name?

21 A. His name was Bill Ashton.

22 Q. And what was Bill Ashton's
23 role while he was an employee at
24 Johnson & Johnson?

1 A. He was in research and
2 development. He was a scientist.

3 Q. And is it your understanding
4 that the five samples that we've been
5 talking about were found in Mr. Ashton's
6 office?

7 A. It is my understanding that
8 they were found in a common area that had
9 shelving and other means of storage that
10 had been at one point -- that he had been
11 located in or around this area.

12 Q. And approximately when were
13 those items moved from the common area to
14 offsite storage?

15 A. So they were, initially they
16 were moved, it is my understanding that
17 this whole group moved floors, and so
18 everything was boxed up, and the person
19 who boxed that up put them in -- kept
20 them in boxes in her office on another
21 floor.

22 And then around 2016, they
23 went to open plan work space with no
24 storage. And so everything had to be

1 moved to offsite storage.

2 Q. Okay. You said that samples
3 were boxed up because there was a move?

4 A. Correct.

5 Q. Did I understand you
6 correctly?

7 A. Yes.

8 Q. Okay. When was that move?

9 A. The move would have been
10 around -- it was related to me that it
11 was ten years prior to that. So it would
12 have been somewhere in the 2006 time
13 frame.

14 Q. And prior to -- prior to the
15 move, where were the offices located that
16 you're referring to?

17 A. Prior to the move to offsite
18 storage or the move between floors?

19 Q. No, now -- research and
20 development department -- strike that.

21 The research and development
22 department you indicated was in the
23 process of a move when they packed up
24 these samples, correct?

1 A. Yes.

2 Q. Okay. Where was the
3 research and development department
4 located prior to that move?

5 A. It was located at the
6 consumer company in Skillman, New Jersey.

7 Q. At J&J Consumer
8 Incorporated?

9 A. Yes.

10 Q. And was Mr. Ashton an
11 employee of Johnson & Johnson Consumer
12 Incorporated?

13 A. He was.

14 Q. You indicated that there was
15 a woman who had packed these samples into
16 boxes and kept them in her office,
17 correct?

18 A. Correct.

19 Q. Okay. Do you know the name
20 of that woman?

21 A. Yes.

22 Q. And what's that woman's
23 name?

24 A. Her name is Lorena Telofski.

1 Q. And is Ms. Telofski an
2 employee of Johnson & Johnson Consumer?

3 A. Yes.

4 Q. Okay. Do you know what role
5 she plays within Johnson & Johnson
6 Consumer?

7 A. I don't know her official
8 title, but she would be in the R&D group.

9 Q. And is she still a member of
10 JJCI's research and development group?

11 A. I believe she is, yes.

12 Q. Okay. If we continue to
13 look at the part of the sample list that
14 relates to offsite storage. If you go
15 down below the research and development
16 listings, the next listings are marketing
17 listings, correct?

18 A. Correct.

19 Q. Okay. Can you describe for
20 me where samples from the marketing
21 department came from?

22 A. As best as I've been able to
23 determine, the sample -- the samples that
24 are denoted as being from marketing, many

1 of them came from the original museum
2 collection that had been in New
3 Brunswick.

4 Q. How was a sample
5 distinguished from a marketing sample,
6 which would be listed in the offsite
7 storage listing, and a museum sample that
8 you would help to compile?

9 A. The ones that are labeled as
10 museum samples are currently in the
11 corporate archives in museum. The ones
12 that are labeled as marketing samples had
13 been sent to offsite storage in 1982.

14 Q. When they were sent to
15 offsite storage in '82, were they sent to
16 offsite storage by the J&J museum?

17 A. No, they were not.

18 Q. Were they sent to offsite
19 storage by members of the marketing
20 department?

21 A. They were sent to offsite
22 storage by the Johnson & Johnson Consumer
23 company.

24 Q. Staying with the list of

1 offsite storage -- the sample list for
2 offsite storage, there is also a
3 department name referenced there as QA,
4 which I think is towards the back.

5 If you look at the top of
6 the page, there is page references that
7 go up to Number 91. And if you look for
8 Page 37 of 91, there are references to
9 quality assurance.

10 Do you see that?

11 A. I see that.

12 Q. Okay. And that's for Sample
13 Numbers JBP-294 and 295. What does the
14 quality assurance reference refer to?

15 A. Those refer to two samples
16 that were discovered in offsite storage
17 that had been marked with the department
18 name of quality assurance.

19 Q. Were those two samples
20 stored offsite along with the marketing
21 samples that we just referred to?

22 A. I don't know whether they
23 were in the same box, but they were all
24 pulled from the offsite storage.

1 Q. Is it your -- is it your
2 understanding, Ms. Gurowitz, that all
3 samples of talcum powder products in the
4 possession of Johnson & Johnson and
5 Johnson & Johnson Consumer are contained
6 here in these two lists?

7 A. All the ones that were
8 located, yes.

9 Q. When was it that you were
10 first asked to work on the exhibit -- the
11 sample list that you worked on for the
12 museum?

13 A. Oh, it was a while ago. I'm
14 try -- it was months and months ago. So
15 I'm trying to -- trying to remember if it
16 was entirely in 2018 or it was a little
17 before. I feel like I've been working on
18 it for a long time. I'm trying to
19 remember. It was a while ago though.

20 Q. Okay. And since the time
21 that you first started working on --
22 strike that.

23 Since the time that you
24 finished this list, have you discovered

1 any additional samples?

2 A. There were some that were
3 donated. So we get a lot of donations.
4 And there were some that were donated.
5 They are marked at the beginning of the
6 museum list.

7 Q. So they are included on this
8 list?

9 A. Yes.

10 Q. Are you aware of any samples
11 that are not on this list?

12 A. I am not.

13 (Document marked for
14 identification as Exhibit
15 Gurowitz-4.)

16 BY MR. LAPINSKI:

17 Q. Ms. Gurowitz, I'm going to
18 hand to you a document that we are
19 marking as Exhibit 4.

20 Ms. Gurowitz, this document
21 was provided to us by counsel for
22 Johnson & Johnson. Is this your current
23 CV?

24 A. Yes.

1 Q. And when was this CV first
2 created?

3 A. This CV was first created
4 last year. I was asked to do it because
5 somebody had requested it and I kept it
6 as, and updated it as needed.

7 Q. And who had requested it?

8 A. Initially when we
9 re-launched the museum, there were a
10 number of news stories, and our media
11 team had asked, somebody had asked them
12 for a CV, so they asked me to create it.

13 Q. And when was the last time
14 this CV was updated?

15 A. Perhaps at the beginning of
16 2018.

17 Q. And you are a graduate of
18 Douglas College in New Brunswick?

19 A. That's correct.

20 Q. Okay. And your degree was
21 in medieval history?

22 A. That's correct.

23 Q. Fair to say that you don't
24 have any educational background in

1 science?

2 A. That's correct.

3 Q. You began working at
4 Johnson & Johnson in 1983?

5 A. Yes.

6 Q. And you've worked for
7 Johnson & Johnson for your entire career?

8 A. That's correct.

9 Q. And for purposes of
10 clarification, Johnson & Johnson -- is it
11 Johnson & Johnson company or is it just
12 Johnson & Johnson if we are trying to
13 distinguish between Johnson & Johnson and
14 Johnson & Johnson Consumer? That's a lot
15 of Johnsons in a row right there.

16 A. It's just Johnson & Johnson.

17 Q. Just Johnson & Johnson. You
18 were an employee of Johnson & Johnson
19 since 1983?

20 A. Yes. I was -- I was hired
21 full-time in 1988. Before then I was a
22 research assistant.

23 Q. And you're still employed by
24 Johnson & Johnson, correct?

1 A. That's correct.

2 Q. And your paychecks come from
3 Johnson & Johnson?

4 A. They do. Johnson & Johnson
5 Services, which is the legal entity.

6 Q. And you've been with that
7 same legal -- you've been with the same
8 legal entity, Johnson & Johnson,
9 throughout your entire career?

10 A. I have.

11 Q. And where is your office
12 located?

13 A. My office is located in our
14 museum building in New Brunswick.

15 Q. And is it fair to say or to
16 categorize your job as a historian for
17 Johnson & Johnson?

18 A. Yes.

19 Q. In the positions that you've
20 held at Johnson & Johnson during your
21 career, have you had any responsibilities
22 that are specific to talcum powder
23 products?

24 A. No, I have not.

1 Q. Are you personally
2 responsible for the -- any talc samples
3 that are maintained in the Johnson &
4 Johnson museum?

5 A. Yes.

6 Q. Okay. And for how long have
7 you had that responsibility?

8 A. Officially since about 2011.
9 Unofficially since 2006.

10 Q. Prior to 2011, was there
11 someone else who had responsibility for
12 maintaining the samples in the museum?

13 A. No. It was me. It was
14 not -- my title was different. So it was
15 part of my job, but not the entirety, if
16 that makes sense.

17 Q. I think it makes sense, but
18 let me just ask a question to clarify.

19 From 2006 forward, other
20 than yourself has there been anybody else
21 who has had responsibility for
22 maintaining the samples in the museum?

23 A. No.

24 Q. How about prior to 2006?

1 A. Yes.

2 Q. And who was responsible for
3 maintaining the samples prior to 2006?

4 A. It was the corporate
5 librarian in the corporate communication
6 group.

7 Q. And I'm sorry. Did you say
8 the corporate librarian in the corporate
9 communications group?

10 A. Yes.

11 Q. Okay. And who was that
12 corporate librarian?

13 A. It was a woman named
14 Elizabeth King.

15 Q. Do you know how long
16 Ms. King had that responsibility?

17 A. I do not.

18 Q. Is Ms. King still an
19 employee of Johnson & Johnson?

20 A. No, she's not.

21 Q. Okay. Is she retired?

22 A. Yes.

23 Q. And do you know
24 approximately when she retired?

1 A. I do not know, but it was --
2 it had to be more than ten years ago,
3 so...

4 Q. And do you know how long she
5 had worked for Johnson & Johnson before
6 she retired?

7 A. I do not know that.

8 Q. Are you able to give me an
9 estimate as to for how long prior to 2006
10 she was responsible for maintaining the
11 samples in the museum?

12 A. I do not know when she
13 started, but it would have been -- you
14 know, certainly through the 1990s, that
15 decade. And I'm not sure when she
16 started with that responsibility. But
17 certainly during the '90s.

18 Q. Do you have a recollection
19 when you started working there in 1983 as
20 to whether or not Ms. King was the
21 corporate librarian?

22 A. Yes, she was. So it would
23 have been certainly before that.

24 Q. What are your

1 responsibilities as it relates to the
2 maintenance of talc samples that are in
3 the museum?

4 A. Well, the talc -- the talc
5 samples are some of the many, many
6 artifacts in our museum. So since we had
7 them professionally catalogued in 2014
8 and 2015, they were put for the first
9 time in acid-free storage that's designed
10 to preserve them, so they're in high
11 density acid-free climate-controlled
12 storage.

13 And so my responsibility is
14 to maintain them in that storage. So
15 they're pretty much -- it's a
16 climate-controlled facility, our
17 archives. It's high density storage.
18 They are in acid-free boxes on shelves in
19 that storage area.

20 Q. And for how long have they
21 been in that type of storage condition?

22 A. Since 2016.

23 Q. And has that storage
24 condition a -- you've been using the word

1 museum. Is that storage condition a
2 physical museum where people are able to
3 see the different samples on display?

4 A. It is -- they are stored in
5 the building, but the samples in storage
6 are not on display.

7 Q. Are there any talc samples
8 that are on display?

9 A. There are two.

10 Q. And which two are they?

11 A. It is a container from 1896
12 and one from, I believe, maybe the early
13 1950s.

14 Q. And are those two contained
15 on the exhibit list?

16 A. I would have to look up
17 their number to confirm that.

18 Q. And are you able to do that
19 with the documents that you have in front
20 of you?

21 A. I am not.

22 Q. Okay. If you were going to
23 do that, how would you go about doing
24 that?

1 A. I would use the database
2 that sort of -- that runs our -- that
3 manages our archives. It's a cloud-based
4 system. So I would need my computer to
5 do that.

6 Q. So when you went into that
7 cloud based system, what would you do in
8 order to be able to identify and locate
9 the two samples that you're referring to?

10 A. I would do a keyword search
11 and I would look to see which ones in
12 location were noted on display.

13 Q. So your keyword search would
14 be "on display"?

15 A. My keyword search would be
16 Johnson's Baby Powder.

17 Q. And then once you did that
18 search, you would have an indication as
19 to which ones were on display as compared
20 to being in storage?

21 A. Yes. I would need to look
22 through each entry.

23 Q. Okay. I'm sorry. You said
24 one of them was a container from the

1 1950s?

2 A. But not -- it was from the
3 United Kingdom in the 1950s, I believe.
4 Both of the ones on display are just in
5 very fragile containers.

6 Q. The second one that you
7 referred to was a container as well,
8 correct?

9 A. Yes.

10 Q. And approximately when was
11 that from?

12 A. 1896.

13 Q. Are you aware of whether
14 there was any product in either of those
15 two containers?

16 A. Not offhand.

17 Q. Then the remaining samples
18 are not on display, they're in storage,
19 correct?

20 A. Yes. Some -- yeah, they are
21 in storage, some in our museum and some
22 were moved offsite to the lab. So you
23 have -- I mean, they're generally -- they
24 would be in storage, but they were moved

1 offsite to the laboratory.

2 Q. Okay. So just talking about
3 the museum samples, you have the two that
4 are on display. And the remainder at
5 some point in time were all in storage as
6 you had described it earlier in your
7 testimony, correct?

8 A. Correct.

9 Q. Some of them samples have
10 since been moved from that storage
11 facility to a lab?

12 A. Correct.

13 Q. Okay. What lab were they
14 moved to?

15 A. It's a lab in Monmouth
16 Junction.

17 Q. And were those, the samples
18 that you're referring to, were they moved
19 as part of the order that we looked at
20 earlier that is Exhibit 3?

21 A. Yes.

22 Q. Other than the samples that
23 were moved to the facility in Monmouth
24 Junction pursuant to the court order, are

1 you aware of any of this store -- these
2 samples in museum storage being moved
3 anywhere else?

4 A. No.

5 Q. Okay. Ms. Gurowitz, you are
6 here today in order to testify about the
7 chain of custody of these various
8 samples, correct?

9 A. Correct.

10 Q. Okay. Do you have any
11 personal knowledge of the chain of
12 custody of any of these samples?

13 A. I have personal knowledge of
14 the partial chain of custody of the ones
15 that are specifically marked museum
16 samples.

17 Q. And in what way did you
18 acquire that personal knowledge?

19 A. I worked with the team to
20 identify these samples and then to pull
21 them from the corporate archives. They
22 were packed up and sent to the lab.

23 Q. And what team did you work
24 with, when you refer to team?

1 A. I worked with the legal
2 team.

3 Q. Is that the Johnson &
4 Johnson legal team or is that Johnson --
5 strike that.

6 The legal team that you're
7 referring to, are they J&J employees?

8 A. They are outside counsel.

9 Q. Everybody who was on that
10 legal team is outside counsel?

11 A. Everyone who I worked
12 directly with.

13 Q. Is there anyone that you
14 worked indirectly with that was not
15 outside counsel?

16 A. Can I ask you to clarify?
17 You mean indirectly in packing up the
18 samples or indirectly in somebody said,
19 "Hey, these guys are going to come and
20 they want to pack up samples"?

21 Q. Well, we'll get -- we'll get
22 to the packing -- we'll get to the
23 packing of the samples. But I guess --
24 let me ask it this way.

1 How were you first put in
2 touch with the legal team?

3 A. Somebody from the Johnson &
4 Johnson law department contacted me.

5 Q. And what was the purpose
6 that they contacted you?

7 A. They said that they -- we
8 were asked to produce samples and
9 somebody would -- they would be putting
10 somebody in touch with me who would then
11 work with me to identify samples and then
12 pull them.

13 Q. And is that the only outside
14 counsel that you worked with in regard to
15 the talc samples? Strike that.

16 Is that the only non-outside
17 counsel person that you worked with in
18 regard to the collection of these
19 samples?

20 A. Yes.

21 Q. And what was that person's
22 name?

23 A. Kim Giganti.

24 Q. Ms. Gurowitz, is it fair to

1 say that you're not going to be offering
2 testimony today regarding the chemical
3 composition of the talcum powder
4 products?

5 A. Yes, correct, I will not.

6 Q. That would not be part of
7 your education?

8 A. No.

9 Q. And that would not be part
10 of your job function at J&J?

11 A. No.

12 Q. That would not be within
13 your area of expertise, correct?

14 A. That is correct.

15 Q. And it's also outside the
16 topic area for which you have been
17 designated today, correct?

18 A. Correct.

19 (Document marked for
20 identification as Exhibit
21 Gurowitz-5.)

22 BY MR. LAPINSKI:

23 Q. Ms. Gurowitz, I'm going to
24 hand to you what I've marked as

1 Exhibit 5. And if you would take a
2 minute to look at that.

3 A. Okay.

4 Q. And let me know when you're
5 ready to answer some questions in regard
6 to that exhibit.

7 A. I'm ready.

8 Q. Before we move on to this,
9 let me go back to the museum list if we
10 could just for a minute.

11 A. Sure.

12 Q. Am I correct that you had
13 testified that certain of the samples
14 that are maintained in the museum were
15 donated?

16 A. Some of them, yes.

17 Q. Okay. Other than the
18 samples that we had talked about that
19 came from Mr. Ashton, are you able to
20 identify which samples were donated?

21 A. Yes, the ones that were
22 donated when I was keeping track. There
23 may have been others that were donated
24 decades ago but records -- records were

1 not kept.

2 Q. But you have no knowledge,
3 other than while you were keeping track,
4 of any of the samples being donated?

5 A. Correct. Although it's
6 been, historically and today, lots of
7 people donate, you know, vintage
8 packaging to us.

9 Q. But you have no knowledge as
10 far as the samples that are listed on
11 here of any of them being donated, other
12 than the ones that you're going to point
13 to now?

14 A. Correct.

15 Q. And which ones are those?

16 A. Let me just turn to that
17 section.

18 Those are the first -- one
19 two -- those are the first four under --
20 on Page 2 of 8 for the museum samples.
21 The ones marked "New artifact donated on
22 9/19/17" and "New museum" 1, 3 and 4.

23 Q. Okay. And do you have
24 information as to who these specific

1 samples were donated by?

2 A. Most of them, yes. The New
3 Museum 3, the regular scent Shower to
4 Shower, somebody left that in an unmarked
5 envelope at the security desk in the
6 front of the museum. There was no name
7 on it, no note with it. And it was an
8 empty bottle. So I have no information
9 on who donated that.

10 Q. When was that?

11 A. That was sometime within the
12 last year. I don't have the date with
13 me. It was sometime within the last
14 year.

15 Q. Does the museum have a
16 policy in place for the receipt of
17 donated samples?

18 A. Yes.

19 Q. And is it a written policy?

20 A. It is not a written policy,
21 but generally when something is donated,
22 we make sure it's a Johnson -- a product
23 from the Johnson & Johnson family of
24 companies. We would want it to be in

1 good condition. And we would take the
2 donor name and information.

3 That being said, a lot of
4 things, like that Shower to Shower
5 bottle, do get left. They're just
6 dropped off with no -- you know, with no
7 information, no name, no note, no return
8 address on the envelope. So there's no
9 way to track it in those cases.

10 Q. And it was you who received
11 New Museum 3 which is the Shower to
12 Shower bottle we're talking about?

13 A. Yes.

14 Q. Okay. And what was it about
15 that particular bottle that made you
16 decide to keep it in the museum?

17 A. I had already been asked to
18 pull Johnson's Baby Powder and Shower to
19 Shower artifacts. So when that arrived,
20 I let the legal team know somebody just
21 donated this. And so I kept it.

22 Q. You said it was left in an
23 unmarked envelope at the --

24 A. Security desk.

1 Q. At the security desk. Is
2 that the museum security desk?

3 A. Yes.

4 Q. Okay. So Johnson & Johnson
5 museum has a -- has a separate security
6 desk from the rest of Johnson & Johnson
7 corporate?

8 A. Yes. Because it's a -- it's
9 in its own building, so...

10 Q. In order to be able to get
11 to the museum, would you first have to be
12 able to go through Johnson & Johnson
13 corporate security to get on the grounds?

14 A. No.

15 Q. So is the Johnson & Johnson
16 museum open to the public?

17 A. No, it is not.

18 Q. However, the public has the
19 ability to get to the museum and interact
20 with security personnel specifically
21 assigned to the museum?

22 A. That's correct.

23 Q. Okay. How about the other
24 three samples that we talked about that

1 were donated? What information can you
2 give me about the first one that was
3 donated on September 19, 2017?

4 A. That is -- it's listed as
5 cardboard metal. So if it's a cardboard
6 container, it's likely one of the rare
7 containers from the 1940s era, World War
8 II era, in which the packaging was
9 switched to cardboard because metal was
10 not available due to the war effort.

11 Q. Okay. And this was donated
12 in September of 2017, correct?

13 A. Correct.

14 Q. This would have gone through
15 your process, and you would have been the
16 one who accepted it into the museum,
17 correct?

18 A. Correct.

19 Q. Do you have the name of the
20 individual who donated that product?

21 A. I would have back at the
22 museum. I didn't know that I needed to
23 bring it, so I do not.

24 Q. And then same in regard to

1 New Museum 3, would you have available to
2 you the name of the person who donated
3 the item designated as New Museum 3?

4 A. No, I would not. That's the
5 one that came in anonymously in the
6 envelope.

7 Q. I'm sorry. That's the one
8 that we -- that we've been talking about.
9 How about New Museum 1.

10 A. New Museum 1. I would have
11 to look. Again, a lot of them just sort
12 of show up. Sometimes people leave a
13 note. Sometimes they don't. So I would
14 have to go back and look.

15 Q. Now, when you say a lot of
16 them just show up, we're only talking
17 about four. Right now we're limited to
18 these four that were donated.

19 A. Correct. We get other
20 donations, vintage Band-Aid brand
21 adhesive bandage tins for safety, things
22 like that.

23 Q. And then how about New
24 Museum 4? Do you have any knowledge as

1 to whether you know the person who
2 donated that particular product?

3 A. Again, I would need to go
4 look through the record. But -- but I --
5 as long as it's not donated anonymously
6 with no information, I do take the donor
7 name.

8 Q. Earlier you had testified
9 about the Johnson & Johnson librarian who
10 had responsibility for overseeing the
11 museum samples before you took on that
12 responsibility.

13 Do you recall that?

14 A. Yes.

15 Q. What's the difference
16 between Johnson & Johnson librarian and
17 you as the Johnson & Johnson historian?

18 A. I am a trained historian by
19 my educational background. I also -- I
20 also work to research and tell stories
21 from the company's -- the history of the
22 company.

23 I maintain our current
24 museum. The corporate librarian was a

1 librarian. She kept -- at the time they
2 had a library with books and periodicals.
3 She kept that. She would look up
4 articles in those periodicals for people
5 who needed to see them. And she also had
6 charge of what was in the old museum.

7 Q. And is corporate librarian
8 still a position within Johnson &
9 Johnson?

10 A. Not in corporate. It may be
11 somewhere in Johnson & Johnson around the
12 world, but not that I'm aware of.

13 Q. Okay. Looking at your CV
14 for a second, which is Exhibit 4. Your
15 first bullet point under your current
16 position, it references, "The Johnson &
17 Johnson Our Story At the Power House."

18 That's the current Johnson &
19 Johnson museum?

20 A. Correct.

21 Q. And where is that museum
22 located?

23 A. It is located on our campus
24 in New Brunswick, New Jersey.

1 Q. And how long has that museum
2 been open?

3 A. In its current state?

4 Q. Yes.

5 A. Since May of 2016 -- wait,
6 so this is 2018, which I can't -- I can't
7 believe. We opened in 2016.

8 Q. Okay. Going back to
9 Exhibit 5. Could you please tell me what
10 this document is?

11 A. Yes. This document
12 represents the research I conducted to
13 try to put together partial chains of
14 custody for the entirety of this list of
15 samples.

16 So these represent the
17 people I spoke to. My handwriting
18 represents the people I spoke to in the
19 different groups that represent the
20 groups -- if you look at the leftmost
21 column that says department name -- that
22 are represented by those groups.

23 So some of the samples were
24 marked marketing. So I asked to speak

1 with folks in the marketing group who
2 might be able to shed some light on the
3 chain of custody for those. The same
4 with R&D and quality, and also PTI.

5 I also spoke to Pam Downs
6 who does records management for our law
7 department because she had also sent out
8 a call for -- around Johnson -- around
9 Johnson & Johnson to try to identify any
10 samples that might be somewhere. And the
11 typed list represents the people that Pam
12 spoke with.

13 Q. Okay. So as far as this
14 e-mail is concerned, the people on this
15 e-mail who you spoke with are Pam Downs,
16 correct?

17 A. Yes.

18 Q. Lorena Telofski?

19 A. Correct.

20 Q. Sarita Finnie from
21 marketing?

22 A. Yes.

23 Q. Barbara Brewer from
24 marketing?

1 A. Yes.

2 Q. Mark Zappa from quality?

3 A. Yes.

4 Q. And Janet Stanish from PTI?

5 A. Yes.

6 Q. Okay. And you spoke with
7 them in order to be able to get chain of
8 custody information in regard to offsite
9 samples; is that correct?

10 A. That is correct.

11 Q. Okay. Did you have any
12 conversations with them in regard to any
13 of the museum samples that are contained
14 in the museum list?

15 A. No, I did not.

16 Q. Now, you referred to Janet
17 Stanish from PTI. What were the
18 conversations that you had with Janet
19 Stanish from PTI?

20 A. Well, so PTI is the one that
21 we actually can put a chain of custody
22 together for. So what I asked Janet --
23 and the PTI samples are the ones in the
24 back that just say lot number, sample

1 number.

2 And so what I asked -- so
3 PTI as the contract manufacturer, they
4 are required by their contract to keep
5 samples for either four years from date
6 of manufacture or one year after
7 expiration date, whichever comes first.

8 And so they send -- they
9 received a request to send their samples
10 to the lab. They did so.

11 So I asked Janet how the
12 samples were stored, whether they were
13 stored onsite at PTI or offsite, how they
14 sent -- packaged the samples up to send
15 to the lab, and also what it meant, on
16 the one that has the four columns across,
17 what the quantity column referred to.

18 Q. So I'm going to interrupt
19 you for a second because now you're
20 starting to refer to a document. And I
21 just want to make sure we are all looking
22 at the document?

23 A. Sorry.

24 Q. So when you said -- you were

1 referring to -- you asked her a question
2 about a column?

3 A. Yes.

4 Q. What document are you
5 looking at right now?

6 A. So that is in the documents
7 I have here. It's marked --

8 Q. The sample list?

9 A. The sample document. The
10 sample list. So this would be the
11 Exhibit C part of the sample list.

12 Q. And then for clarity, why
13 don't we work off of the numbers that are
14 at the top of the page where it says --
15 the one that I'm looking at right now is
16 Page 71 of 91. If you could refer to the
17 specific page that you were looking at.

18 A. Sure. I am looking at Page
19 64 of 91. It is part of that same
20 subset.

21 Q. And you said you had
22 questions in regard to the fourth column,
23 which was sample number?

24 A. So it was part of my

1 conversation with Janet, just to put
2 together -- because this area is the area
3 that we can do the most complete chain of
4 custody for. The others are just little
5 pieces. But I was not able to put
6 together full chains of custody.

7 So Janet said the samples
8 were stored at a storage room at the PTI
9 facility. They were stored in containers
10 on shelves.

11 The quantity column, the one
12 represents a sealed container of
13 Johnson's Baby Powder. So where they had
14 more than one sample, they were able to
15 send a sealed container. Where they only
16 had one, what they did was they took out
17 a portion of that and put it in a sealed
18 cup, which they labeled, that would be
19 represented by the columns that say --
20 the entries that say 0.5.

21 She said they then put them
22 on pallets and took them by truck to a
23 lab in Georgia where they initially
24 thought that the separation, the

1 splitting was going to happen. And then
2 when it was determined that it was going
3 to happen in New Jersey, they Federal
4 Expressed them from that lab to
5 Georgia -- from the lab in Georgia to New
6 Jersey, to the lab in New Jersey.

7 Q. Other than discussions that
8 you had with Ms. Stanish in regard to the
9 PTI samples, did you have any other
10 discussions with her at all?

11 A. No.

12 Q. When was it that you first
13 spoke with Ms. Stanish?

14 A. It was earlier this week.
15 So it was the very beginning of the week.

16 Q. For how long did you speak
17 with her?

18 A. It was 15 minutes, maybe.
19 It was a very short conversation.

20 Q. And is that the only time
21 that you spoke with her?

22 A. Correct, yes.

23 Q. And did you take any notes
24 during that particular conversation?

1 A. No, I did not.

2 MR. LAPINSKI: Why don't we
3 go off the record.

4 THE VIDEOGRAPHER: The time
5 is 10:36 a.m. We are off the
6 record.

7 (Short break.)

8 THE VIDEOGRAPHER: We are
9 back on the record at 10:52 a.m.

10 BY MR. LAPINSKI:

11 Q. Ms. Gurowitz, before the
12 break we were talking about several
13 samples that had been donated to the J&J
14 museum. Do you recall that?

15 A. Yes.

16 Q. And I believe you had
17 testified that to the extent you had
18 recorded the names of individuals who had
19 donated particular items, they would be
20 available to you in a database that you
21 maintain; is that correct?

22 A. Yes.

23 Q. And that's a cloud-based
24 database?

1 A. Yes.

2 Q. If on a break we were to
3 make -- give you access to a computer,
4 would you be able to access that database
5 and get the names of any individuals who
6 donated product?

7 Excuse me.

8 A. I have the -- I have the
9 connection from my laptop. So I wouldn't
10 be able to. So it's -- it's like a path,
11 a specific pathway. So I wouldn't be
12 able to without the login screens and
13 things like that.

14 Q. Okay. Before the break I
15 had given you Exhibit 5, which was an
16 e-mail that you were -- that was sent to
17 you in regard to potential individuals to
18 speak to about chain of custody, correct?

19 A. This e-mail was sent to me
20 as -- the typed part of the e-mail from
21 Pam Downs is a list of people that she
22 spoke to trying to find out if there were
23 any more samples around.

24 Q. Okay. And then the

1 handwritten names are the names of the
2 people that you spoke to, correct?

3 A. Correct.

4 Q. We were talking about your
5 conversation with Janet Stanish from PTI
6 before the break. You said you did speak
7 with miss Stanish once, correct?

8 A. Correct.

9 Q. And you spoke with her for
10 about 15 minutes?

11 A. About that, yes.

12 Q. Okay. Did you do any other
13 research in regard to the 400-plus PTI
14 samples that are identified as it relates
15 to chain of custody?

16 A. I just -- I just looked at
17 the list and then I spoke with Janet.

18 Q. If -- as we sit here today,
19 if I were to pick out a specific sample
20 from the list of PTI, would you be able
21 to discuss the chain of custody -- chain
22 of custody for a specific sample?

23 MS. FOURNIER: Objection.

24 THE WITNESS: As part of the

1 overall set, I would, because I
2 did talk to Janet about the chain
3 of custody for the collection of
4 samples.

5 BY MR. LAPINSKI:

6 Q. Okay. You had testified
7 that -- and why don't we -- why don't we
8 go to, so that we're looking at the list
9 of samples that had been provided by PTI.

10 A. Okay.

11 Q. And just for point of
12 reference, why don't we work off of the
13 same page that we were working off of
14 before, which I believe was Page 64.

15 A. I think we may be looking at
16 different iterations of this, because
17 mine says Exhibit 2.

18 Q. Mine is just stacked
19 differently. I think we're getting to
20 the same page.

21 A. Okay.

22 Q. Because this isn't my --
23 that's not my PTI stuff.

24 A. Oh, okay.

1 Q. So if you're looking at Page
2 64 of 91, the first lot number should be
3 2362 RB, correct?

4 A. Correct.

5 Q. Okay. So you had -- you had
6 testified that in the quantity column, if
7 there is a one listed in the quantity
8 column, then that means that PTI had at
9 least one sealed sample; is that correct?

10 A. That means that PTI had more
11 than one sealed sample.

12 Q. PTI had more than one sealed
13 sample, but they only produced one
14 sample, correct?

15 A. That is correct.

16 Q. Okay. Do you know how many
17 additional samples are in the possession
18 of PTI that have not been produced?

19 A. I do not know. I do know,
20 through my conversation with Janet, that
21 they are required by their contract with
22 Johnson & Johnson that they need to keep
23 samples of the finished product. So they
24 were -- so if they had more than one

1 sealed bottle of the finished product,
2 they could then send an entire sealed
3 bottle. So, for example, if they had two
4 bottles, hypothetically, of a product,
5 they could send one bottle to the lab and
6 they would keep one bottle as part of
7 their contractual obligations.

8 If they only had one bottle
9 total of that particular product, then
10 they had to divide it. And that's what
11 the 0.5's represent.

12 Q. And is it your understanding
13 that all of the samples that were
14 produced by PTI were finished products
15 that were in a sealed bottle?

16 A. No. That was not my
17 understanding. The ones on the pages
18 that have four columns across were the
19 finished product samples.

20 The ones on the pages that
21 only have three columns across --

22 Q. Okay. So I'll interrupt you
23 for a second, and let's turn. I'm
24 looking at Page 72 of 91 right now.

1 A. Okay. I can't used to
2 double-sided.

3 Q. I was just about to say,
4 I've made it a little more difficult on
5 you in order to save the trees. I have
6 them double-sided, so it's becoming a
7 little more difficult for you.

8 We're looking at Page 72 of
9 91?

10 A. Yes.

11 Q. And you started to provide
12 some testimony in regard to the samples
13 that are listed on the page with three
14 columns. Is this what you're referring
15 to?

16 A. That is what I'm referring
17 to.

18 Q. And what is your
19 understanding of these samples?

20 A. It is my understanding that
21 these samples are raw talc and not
22 finished product.

23 Q. Okay. If we can go back
24 to -- first of all, staying with PTI for

1 a minute. Is there anyone other than
2 Janet Stanish that you spoke with in
3 regard to PTI samples?

4 A. No. It was just Janet.

5 Q. Going back to Exhibit 5 and
6 the other people that you spoke with.
7 You wrote down Mark Zappa from quality,
8 correct?

9 A. Correct.

10 Q. Okay. And you had a
11 conversation with Mark Zappa in regard to
12 chain of custody?

13 A. I did.

14 Q. Okay. When was the first
15 time that you spoke with Mr. Zappa?

16 A. Oh, it was -- I don't have
17 the date. It was a few weeks ago.

18 Q. And for how long did you
19 speak with Mr. Zappa?

20 A. Again, it was not a
21 tremendously long conversation. It would
22 have been under 30 minutes.

23 Q. Okay. And what was the
24 substance of the conversation that you

1 had with Mr. Zappa?

2 A. So I was trying to piece
3 together chain of custody for the samples
4 that are marked quality assurance. And I
5 will turn to those and let you know what
6 page those are on as soon as I find them.
7 I'm sorry. I always forget to look on
8 the other side of the double-sided.

9 Q. If I can find it, I'll let
10 you know.

11 A. On Page 37 of 91.

12 Q. So on Page 37 of 91, there
13 are two samples that are listed as coming
14 from the quality assurance department; is
15 that correct?

16 A. That is correct.

17 Q. And that's Samples JBP-294
18 and JBP-295, correct?

19 A. That is correct.

20 Q. Are they the only two
21 samples that you spoke with Mr. Zappa
22 about?

23 A. Yes, I believe they are. I
24 think those are the only two marked

1 quality assurance on the list.

2 Q. And did you take notes while
3 you were speaking with Mr. Zappa?

4 A. No, I did not.

5 Q. So you spoke with Mr. Zappa
6 for about a half hour in regard to these
7 two samples, correct?

8 A. Yes.

9 Q. And what did Mr. Zappa tell
10 you in regard to these two samples?

11 A. Mr. Zappa said that these
12 particular samples are from 1984 so they
13 are beyond the memory of any employee
14 still in quality assurance, in that area.

15 They were found in -- they
16 were pulled from offsite storage in a box
17 of general products, not just Johnson's
18 Baby Powder, but other products and other
19 items. And the box was labeled quality
20 assurance.

21 I asked Mark if it were the
22 practice of quality assurance to send
23 samples to offsite storage. He said no,
24 it was not their practice. They did not

1 send samples to offsite storage. So he
2 was not sure how or why they initially
3 got in those boxes.

4 In the conversation, we
5 determined that it's possible that these
6 were just things that were boxed up from
7 the quality assurance area, whatever area
8 they occupied, and they found their way
9 into that box, and it was labeled quality
10 assurance because that's the area of the
11 building they had occupied.

12 Q. Okay. So did Mr. Zappa have
13 any other information in regard to these
14 two samples other than what you just
15 shared?

16 A. He did not.

17 Q. Did he give -- did he say
18 that he was aware that the bottles were
19 damaged in any way?

20 A. He did not mention that.

21 Q. Did he indicate at all that
22 he had knowledge of the bottles having
23 been tampered with at any particular
24 time?

1 A. He did not.

2 Q. Did he indicate that the
3 bottles had been previously donated by
4 someone outside of Johnson & Johnson?

5 A. He did not. Again, they
6 were so old that they were beyond the
7 memory of anyone -- of certainly him and
8 anyone in that area. Nobody was --
9 nobody was -- is currently there who was
10 there when these were sent to offsite
11 storage.

12 Q. Did Mr. Zappa refer you to
13 any documents during your conversation?

14 A. No, he did not.

15 Q. Did he send you any
16 documents prior to or subsequent to your
17 conversation?

18 A. He did not.

19 Q. And you said you didn't take
20 any notes when you spoke with Mr. Zappa?

21 A. I wrote down his name.

22 Q. Did the two of you discuss
23 anything else?

24 A. No.

1 Q. You also noted here that you
2 spoke with Barbara Brewer from marketing,
3 correct?

4 A. That is correct.

5 Q. And before we get to
6 Ms. Brewer, did Mr. Zappa indicate to you
7 that there was anyone else from within
8 marketing who may have -- I'm sorry.

9 Did Mr. Zappa indicate to
10 you that there was anyone else within the
11 quality department who may have
12 information in regard to these two
13 samples?

14 A. No, he did not.

15 Q. Now, you wrote down that you
16 had also spoken with Barbara Brewer from
17 the marketing department, correct?

18 A. That is correct.

19 Q. And how many times did you
20 speak with Ms. Brewer?

21 A. Just once.

22 Q. Okay. And when was it that
23 you spoke with Ms. Brewer?

24 A. It was a few weeks ago.

1 Q. Okay. For how long did that
2 conversation last?

3 A. Anywhere between half hour,
4 45 minutes.

5 Q. And what was the subject of
6 your conversation with Ms. Brewer?

7 A. An attempt to piece together
8 chain of custody for the offsite samples
9 that are labeled marketing as department
10 name.

11 Q. And looking at the list,
12 would you agree that the majority of
13 offsite samples are samples that fall
14 under the marketing department?

15 A. Yes.

16 Q. Okay. And what was the
17 substance of the conversation that you
18 had with Ms. Brewer?

19 A. The substance of the
20 conversation was that these were sent to
21 offsite storage so long ago that they
22 were again beyond the memory of any
23 employee still there. And Barbara Brewer
24 is an employee who has been with the

1 company a long time. And it was still
2 outside of her memory as an employee.

3 So -- but, so we -- we
4 discussed that. She did say that it is
5 not the practice of marketing to send
6 samples to offsite storage and that these
7 boxes were labeled marketing, but since
8 it is not part of marketing's policy and
9 practice to send samples to offsite
10 storage, she doubted whether the
11 marketing group that long ago had sent
12 them.

13 And so that was part of my
14 attempt to piece together the chain of
15 custody. And we had determined that
16 probably the bulk of the samples that are
17 labeled marketing had been separated from
18 the old Johnson & Johnson museum in 1982,
19 sent back to the consumer company, and
20 then somebody there sent them to offsite
21 storage, and they had gotten -- they were
22 labeled marketing likely because they
23 were product samples.

24 Q. You say that Ms. Brewer

1 indicated that it was not the practice of
2 the marketing department to send samples
3 to offsite storage; is that correct?

4 A. That is correct.

5 Q. Do you know whether or not
6 it is the practice of the marketing
7 department to maintain product samples?

8 A. I do not. I think she said
9 if they maintained something, it would be
10 for really -- I was trying to -- since we
11 were trying to track chain of custody, it
12 was not part of the discussion because I
13 was concerned with these particular
14 samples. She said -- she did say that it
15 was not their practice to send them to
16 offsite storage.

17 Q. And what else did you
18 discuss with Ms. Brewer?

19 A. It was -- that was it. Just
20 around these samples and how they had
21 gotten into offsite storage originally.

22 Q. Okay. It indicates here
23 that you also spoke with Ms. Finnie from
24 the marketing department?

1 A. That is correct.

2 Q. Okay. And did you speak
3 with Ms. Finnie before or after you had
4 spoken with Ms. Brewer?

5 A. At the same time on the same
6 call.

7 Q. The two of them were on the
8 same call?

9 A. Correct.

10 Q. Okay. And what information
11 did Ms. Finnie share with you in regard
12 to marketing samples?

13 A. Sarita Finnie has a much
14 shorter tenure with the company. So she
15 asked Barbara Brewer, who is a long-term
16 employee, to be on the call, because
17 Sarita did not have any information about
18 the samples.

19 Q. And it was -- if I
20 understand correctly, Ms. Downs had
21 recommended that you contact either
22 Sarita Finnie or Katie Decker from
23 marketing in regard to chain of custody;
24 is that correct?

1 A. That is not --

2 MS. FOURNIER: Objection.

3 THE WITNESS: That is not
4 correct. The typed list
5 represents people that Pam Downs
6 reached out to because she thought
7 they might know of samples.

8 BY MR. LAPINSKI:

9 Q. Okay. When you reached out
10 to the marketing department, who was the
11 person in the marketing department that
12 you first reached out to?

13 A. I asked the legal team if I
14 could find, if I could speak with
15 somebody in the marketing group. Sarita
16 who leads that team was identified. And
17 then she asked Barbara to participate
18 because she has a much shorter tenure
19 with the company and she did not have any
20 information. And she was hoping that
21 Barbara would.

22 Q. And do you know what
23 Ms. Finnie's title is?

24 A. I don't know exactly. We

1 could -- we could find out for you.

2 Q. And do you know what
3 Ms. Brewer's title is?

4 A. I don't know her exact
5 title, but she's an administrative
6 assistant.

7 Q. Was there anyone else on the
8 call other than Ms. Finnie and Ms. Brewer
9 when you spoke with them?

10 A. Just one of the legal folks
11 who facilitated the call.

12 Q. Okay. Was it an outside
13 attorney or was it an inside attorney?

14 A. Outside.

15 Q. Do you know who that
16 attorney was?

17 A. It was Andrew Karp.

18 Q. Okay. Did Ms. Finnie or
19 Ms. Brewer share any other information
20 with you other than what we discussed?

21 A. No.

22 Q. You also indicate here that
23 you spoke with Lorena Telofski from
24 research and development; is that

1 correct?

2 A. That is correct.

3 Q. Okay. And when did you
4 first speak with Ms. Telofski?

5 A. It was a few weeks ago.

6 Q. And for how long did that
7 telephone conversation last?

8 A. Again, probably somewhere
9 between half hour, 45 minutes.

10 Q. Taking a step back to the
11 marketing people that we spoke about.
12 Did the marketing people send you any
13 documents in regard to -- in follow-up to
14 the conversations that you had?

15 A. They did not.

16 Q. Did they send you any
17 documents prior to the conversation that
18 you had?

19 A. They did not.

20 Q. Okay. Going back to Ms.
21 Telofski. You said you spoke with her a
22 couple weeks ago?

23 A. Yes.

24 Q. And the conversation lasted

1 about a half hour?

2 A. Somewhere between half hour,
3 45 minutes.

4 Q. Okay. And what did you
5 speak to Ms. Telofski about?

6 A. I was attempting to try to
7 piece together a chain of custody for the
8 samples on the list that are marked
9 research and development. That would
10 start on Page 18 of 91.

11 Q. What information did
12 Ms. Telofski give you in regard to these
13 samples?

14 A. Ms. Telofski, the first set
15 of samples are actual Johnson's Baby
16 Powder. Again, they were -- they were
17 much older, and she didn't have
18 information specifically. She did say
19 that research and development again did
20 not have a practice of sending things to
21 offsite storage. She did say that the
22 ones that were not United States products
23 would likely have been kept by someone as
24 souvenirs because it was interesting

1 because they were from outside of the
2 U.S.

3 Q. And just for purposes of
4 clarification, the first five research
5 and development samples that we're
6 talking about which are JBP-1, 2, 3, 4
7 and 6 are samples which originated from
8 Mr. Ashton's office; is that correct?

9 A. Or the area around
10 Mr. Ashton's office. There was, as I
11 understand it, an open common area. And
12 these things were in that space.

13 Q. Did Ms. Telofski -- did
14 Ms. Telofski indicate that she had any
15 knowledge that the samples -- the
16 research and development samples were
17 part of any type of research project?

18 A. She did not.

19 Q. If you turn to Page 46 of
20 91.

21 A. I'm not seeing it. I'm
22 sorry.

23 Q. Take your time.

24 A. They've gotten maybe a

1 little out of order. 48 of 91?

2 Q. 46.

3 A. 46. Okay.

4 Q. And at the bottom of Page
5 46, there's an entry for a sample from
6 the research and development department
7 and it starts RR-001; is that correct?

8 A. That is correct.

9 Q. And do you know what the RR
10 designation refers to?

11 A. I do not.

12 Q. Do you know where the RR
13 designation came from?

14 A. I do not. But I believe the
15 sample number, those were -- the legal
16 team that collected these, those are
17 their sample numbers. So the one
18 directly above RR-001, STS would be
19 Shower to Shower, but I don't know what
20 the RR stands for.

21 Q. And did you inquire at all
22 from Ms. Telofski what that represented?

23 A. I did not, because it was
24 pretty clear from the label column that

1 we were talking about rocks.

2 Q. Okay. And is it your
3 assumption that all of these samples that
4 are labeled with a sample number
5 beginning with RR refers to a raw rock?

6 A. Yes, they would appear to do
7 that.

8 Q. And is that your testimony,
9 that they all refer to raw rock?

10 A. If that's -- they all refer
11 to -- they all refer to rocks, yes.

12 Q. Okay. And what was the
13 specific testimony -- what was the
14 specific information that Ms. Telofski
15 had given to you?

16 A. Ms. Telofski said that these
17 rocks were in that common area that
18 Mr. Ashton, who retired -- she said he
19 was active I believe during the '60s,
20 '70s and part of the '80s, retired, and
21 then subsequently passed away.

22 He collected things when he
23 traveled around the world. And the rocks
24 were part of his collection.

1 Q. And did Ms. Telofski tell
2 you anything else in regard to the
3 samples that are from the research and
4 development department?

5 A. She said that after
6 Mr. Ashton passed away, that his daughter
7 said -- came with a box of rocks that he
8 had at his house and gave them to
9 Ms. Telofski.

10 Q. And from this list, are you
11 able to identify which samples would have
12 been samples that came from Mr. Ashton's
13 daughter's home?

14 A. I am not.

15 Q. Okay. Did you make any
16 further inquiry in regard to that?

17 A. About which samples came
18 from his daughter?

19 Q. Yes.

20 A. It was relayed to me that
21 they were just put in boxes with the
22 other rocks.

23 Q. Do you know what
24 Mr. Ashton's daughter's name is?

1 A. I do not.

2 Q. Did you speak with
3 Ms. Telofski in regard to any samples
4 other than those from the research and
5 development department?

6 A. No, I did not.

7 Q. Is there anything else that
8 you discussed with Ms. Telofski that you
9 have not yet mentioned?

10 A. Just sort of the movement of
11 these items, the rocks that were not
12 brought back by Mr. Ashton's daughter
13 were in -- on shelves, you know, some
14 sort of storage unit in sort of the
15 common area that had been outside of the
16 area -- around the area that his office
17 had been in.

18 And then Ms. Telofski had to
19 box these up at some point somewhere
20 around 2006 when her group moved floors.
21 She boxed them up and they sat in boxes
22 in her office for quite a number of
23 years. Around the 2016 time frame, they
24 were informed that there was going to be

1 construction on that space in the
2 building and it was moving to open plan
3 work space which would have no storage.
4 And at that time these items were sent to
5 offsite storage.

6 Q. And you said that was around
7 2016?

8 A. Yes. In that time frame.

9 Q. Okay. And then lastly, you
10 indicated that in preparation you spoke
11 with Pam Downs, correct?

12 A. I spoke with -- Pam Downs
13 was the next-to-last conversation I had,
14 yes.

15 Q. Okay. And when did you
16 speak with Ms. Downs?

17 A. Maybe a week or two ago.

18 Q. And for how long did you
19 speak with Ms. Downs?

20 A. Probably less than
21 30 minutes.

22 Q. Okay. And what was your
23 conversation with Ms. Downs in regard to?

24 A. My conversation with Pam

1 Downs was whether she had identified
2 any -- any other samples or she, in this
3 list of people that she spoke to, that
4 they had -- they were able to provide any
5 information regarding the chain of
6 custody for the samples on this list.

7 Q. And did she give you any
8 additional information?

9 A. She said they -- the folks
10 that she spoke to were not able to
11 identify any other samples, and they had
12 no information about chain of custody. I
13 mean other than -- you know, because she
14 spoke with some of the folks I spoke
15 with, although I spoke with the folks
16 before I spoke with Pam. So other than
17 what was relayed to me by them.

18 Q. So it's your understanding
19 that other -- other than the people who
20 you spoke with, there's no one who has
21 any knowledge as it relates to chain of
22 custody of the offsite samples?

23 A. That is my understanding.

24 Q. Now, you said that Pam Downs

1 was the next-to-last person that you had
2 spoken with?

3 A. Correct.

4 Q. Is there someone else that
5 you spoke with who we've not discussed?

6 A. No.

7 Q. Okay. What did you mean
8 when you said she was the next to last
9 person you spoke with?

10 A. I spoke with Janet Stanish
11 from PTI after I spoke with Pam.

12 Q. Okay. So you're talking
13 just in the chronology of things,
14 Ms. Downs was the second-to-last person
15 that you had spoken with?

16 A. Correct.

17 Q. Okay. Ms. Gurowitz, when
18 were you first contacted about this
19 deposition?

20 A. Oh, I'm trying to think.
21 I'm trying to think back of the entire
22 chronology of pulling the samples and the
23 deposition.

24 It was a few weeks ago. I'm

1 sorry. I don't remember the exact date.

2 Q. By whom were you contacted?

3 A. I was contacted by the
4 outside legal folks who were working with
5 us.

6 Q. Okay. Is providing
7 testimony regarding chain of custody a
8 normal part of your job function?

9 A. I've never done it before.

10 Q. Okay. Have you in the past
11 ever had to provide any type of an
12 affidavit in regard to the chain of
13 custody for any type of Johnson & Johnson
14 product in your capacity as the
15 historian?

16 A. I have not had to provide an
17 affidavit.

18 Q. And as we've discussed,
19 you've had to educate yourself in order
20 to prepare for the testimony today,
21 correct?

22 A. That is correct.

23 Q. Okay. Other than talking to
24 the people who we just spoke with, what

1 have you done in order to prepare to
2 testify today?

3 A. I looked at documents that
4 were in the corporate archives.

5 Q. And did you -- did you
6 search out those specific documents in
7 order to educate yourself?

8 A. Yes, I did.

9 Q. Okay. And what documents
10 did you look at?

11 A. I believe you have them.
12 There is an internal memo from about the
13 1981, 1982 time frame that said that the
14 law department, which was in charge of
15 the old Johnson & Johnson museum, was
16 going to disband and close the museum and
17 eliminate the collection because they no
18 longer had space. They were keeping it
19 for the purposes of keeping a trademark
20 history. So, you know, the changes over
21 time in the labels and the packaging and
22 the colors used, things like that.

23 And so this memo said that
24 they would then be sending the relevant

1 artifacts back to the operating
2 companies.

3 Q. And what other documents did
4 you look at?

5 A. There was another document
6 that, from the same time frame from the
7 then head of public relations who said
8 whatever does not get sent back we're
9 going to keep a part of this collection,
10 because it helps us tell the story of the
11 history of Johnson & Johnson.

12 Q. Now, when you went to look
13 at documents in the corporate archives,
14 what was the process -- what was the
15 process that you used when you were in
16 the corporate archives? What was it
17 first that you were looking at where you
18 then came upon these documents?

19 A. So what I was trying to do
20 is I was trying to track -- piece
21 together as much of a chain of custody as
22 was possible for the -- for the sample
23 items labeled marketing that had been in
24 offsite storage, because most of them,

1 many or most of them had at one point
2 been in the old museum collection.

3 So I went and looked at
4 documents in the archives that related to
5 the historical management of that old
6 museum and found that document from about
7 the 1982 time frame saying that the
8 museum, the collection would be disbanded
9 and the artifacts, the items would be
10 sent back to the operating companies.

11 Q. Okay. Now, when you talk
12 about looking at documents in the
13 corporate archives, is this something
14 that you're able to do by going online on
15 an internal J&J database to access the
16 documents --

17 A. It is --

18 Q. -- or are you going to a --

19 A. It's that --

20 Q. -- file and pulling a file?

21 A. It's that cloud-based
22 database, which tells me the location of
23 what I'm looking for. And then I would
24 go back into the archives, look for the

1 relevant shelf and acid-free file box and
2 then pull those.

3 Q. So you said that the cloud
4 is able to tell you where to go for what
5 you're looking for. When you started the
6 process, what was the -- what was the
7 search term or terms that you used in
8 order to start this document search
9 process?

10 A. So those -- there are a few
11 boxes, and when I say boxes, they are
12 slim boxes of museum records, files, and
13 so I looked for those.

14 Q. So this is before you
15 went -- before you went online, you
16 looked at a physical box of documents?

17 A. So I went into the database
18 that helps us manage the collection,
19 tells us where everything is.

20 Q. Okay.

21 A. I looked up the location,
22 and then pulled those boxes and found
23 that document that I had mentioned
24 before.

1 Q. So just so that I can
2 clarify. When you went into the database
3 in order to look for the boxes, what were
4 the search term or terms that you used in
5 order to be pointed to those boxes?

6 A. So I used museum management
7 records as the search term, because it
8 would have been part of the museum
9 management records.

10 Q. And that search term led you
11 to -- I'm sorry -- you said one or two
12 boxes?

13 A. Yes. It's just a very few
14 boxes. And when I say boxes I'm not
15 talking about, you know, those big sort
16 of banker boxes, file boxes. These are
17 sort of slim, acid free storage boxes in
18 which there are acid free file folders
19 and the documents were in those folders.

20 Q. And how many documents in
21 total do you think you reviewed in
22 preparation for the deposition?

23 A. I -- there were two that
24 applied specifically to putting together

1 chain of custody, so those were the ones
2 that I reviewed.

3 Q. And they're the two
4 documents that you referenced, the 1982
5 document and the memo in and around that
6 time?

7 A. Yes.

8 Q. Okay. Were there any other
9 documents that you reviewed that you did
10 not consider to be relevant?

11 A. There were other things that
12 had complete non-relevance. They were,
13 you know, research inquiries from
14 students that date back, you know, things
15 like that, completely irrelevant.

16 Q. Okay. So approximately how
17 many pages in total did you review as you
18 were looking for materials of relevance
19 to you?

20 A. So I looked through the file
21 folders in those boxes. I don't have a
22 count on pages. But those were the two
23 documents that were of relevance.

24 Q. Okay. They're the only two

1 documents that you feel provided you with
2 any type of information that you're able
3 to share here today?

4 A. Regarding the dispersal of
5 the collection. Again, I was trying to
6 piece together as much of a chain of
7 custody as I could for the ones that were
8 labeled marketing on the list.

9 Q. Okay. And as far as the
10 other samples that are on the list,
11 whether for the offsite samples or for
12 the museum samples, was there any
13 other -- any other work that you did in
14 order to prepare yourself?

15 A. I spoke to people who I had
16 hoped would have information about those
17 particular items.

18 Q. Okay. Now, how about within
19 the museum itself. Did you speak with
20 anybody in the museum in regard to chain
21 of custody and samples?

22 A. It's just me, so...

23 Q. Okay. So other than doing a
24 search for and pulling some documents,

1 the remainder -- and speaking to the --
2 speaking to the people who you spoke
3 with, there is no other work that you did
4 in preparation for the deposition?

5 A. That was it. There's one
6 other set of documents that was provided
7 to me. It was a set marked Drawer 5E
8 that seems to represent at least some of
9 the items that are in the -- listed as
10 marketing in the samples. And so I could
11 not make a direct correlation with
12 everything on that list with everything
13 here. But there's some that you can say,
14 okay, yes, so these do look like they
15 came from the collection of the old
16 museum, were sent back to the operating
17 unit, and the operating unit sent them to
18 offsite storage.

19 Q. And by whom was this Drawer
20 5E file provided?

21 A. It was -- it was obtained as
22 part of this process. And so it was
23 provided so that I could try to -- you
24 know, I was -- in doing research, it was

1 provided so that I could try to piece
2 together, again, chain of custody for the
3 items marked marketing.

4 Q. Okay. You said it was
5 obtained as part of this process. Who --
6 let's go back to my original question.
7 Who gave it to you? Who gave the Drawer
8 5E file to you?

9 A. So I believe originally the
10 outside legal folks.

11 Q. Okay. And did you have any
12 role in compiling the information that
13 was in drawer -- the drawer 5E file?

14 A. No. It very much predates
15 my tenure at Johnson & Johnson.

16 Q. Okay. But the file is a
17 Johnson & Johnson file?

18 A. What they were -- it's -- it
19 was -- it was -- there were copies of old
20 typed transfer sheets to transfer the
21 items to offsite storage from about 1982.

22 Q. And other -- other than the
23 old typed transfer sheets, was there
24 anything else in that -- in that

1 particular file?

2 A. I believe that was it.

3 Q. And did you meet with
4 counsel in preparing for today's
5 deposition, with your -- the attorneys
6 for Johnson & Johnson?

7 A. Yes.

8 Q. Okay. When was the first
9 time that you met with them?

10 A. To prepare for the
11 deposition --

12 Q. Correct?

13 A. -- or to pull the samples?
14 I'm trying to remember
15 exactly. Maybe in the past few weeks to
16 month or so. It was after I was notified
17 that I would be deposed.

18 Q. Okay. And how many times
19 did you end up meeting with counsel?

20 A. I don't have a -- it would
21 be single digits, but I don't have -- I
22 don't know if I could give you an exact
23 number.

24 Q. Okay. But less than ten?

1 A. Yeah.

2 Q. Okay. And approximately how
3 long did you meet with them each time you
4 met?

5 A. Two were most of the day
6 meetings. The other ones were short.
7 Maybe just an hour, few hours, hour or
8 so.

9 Q. And telephone or in person?

10 A. Both.

11 Q. Okay. And if you could just
12 make sure to speak up a little bit.

13 A. Sure. I'm sorry.

14 Q. That's quite all right. I
15 want to make sure we're able to hear
16 everything.

17 Now, you mentioned that that
18 you met with counsel in order to prepare
19 for the deposition. But you also had
20 meetings with counsel for purposes of
21 gathering samples, correct?

22 A. That is correct.

23 Q. Okay. What role did you
24 play in gathering samples?

1 A. I gathered the samples that
2 were specifically from the current
3 museum, the ones on -- that are marked
4 museum collection. I can give you a page
5 number on which to start.

6 So the ones -- it should --
7 it starts with Page 2 of 8, page ID is
8 13369.

9 So that was the ones that --
10 where the leftmost column is museum
11 number.

12 Q. Okay. And you were
13 responsible for gathering all of these
14 samples and providing them to counsel?

15 A. Yes.

16 Q. Okay. Did you also -- were
17 you also responsible for packing these
18 samples?

19 A. I worked with the legal
20 folks on that, just because it's a
21 massive job, and it helps if there's more
22 than one person doing it.

23 Q. And what was -- what was the
24 process that was followed in preparing

1 all of these samples for shipment?

2 A. So I pulled them from the
3 archival storage, and I wear gloves,
4 obviously, when I handle fragile and old
5 artifacts.

6 They were then taken out of
7 the acid free tissue paper that they were
8 wrapped in out of the archival boxes.
9 They were noted by the legal folks. They
10 were put into boxes for transport to the
11 lab. And then they were -- each item was
12 checked off on a transfer sheet and
13 signed and initialed.

14 Q. So when you say they did --
15 when you say they were noted by counsel,
16 what do you mean noted by counsel?

17 A. So there are -- and I
18 apologize if I'm not using the right
19 name -- transfer sheets --

20 Q. Okay.

21 A. -- that you have to -- like
22 a chain of custody sheet. And so it was
23 that with -- you know, it had a listing
24 of, this is X, Y, Z, this is the number

1 A, B, C. And so I would need to initial
2 next to each one, yes, we put this in
3 this box, took it from this box, put it
4 in this box.

5 Q. And was it you who prepared
6 each sample for shipping?

7 A. When you say prepared for
8 shipping, what do you mean?

9 Q. You said, as you had
10 testified to, you take the -- you wear
11 gloves when handling the samples in order
12 to be able to, I would, assume have a
13 level of care when you're handling the
14 samples, correct?

15 A. Correct. Well, skin oils
16 can damage a fragile old artifact, so you
17 don't want to touch it directly.

18 Q. Okay. So now I want to
19 transfer that over to the packaging
20 process when we're getting ready to ship.

21 Did you oversee or do the
22 packaging of the products when they were
23 being prepared for shipment?

24 A. So I put them, with the

1 assistance of counsel, again it was a
2 massive job. We put them in -- took them
3 out of the archival storage, put them in
4 boxes, signed the transfer sheet.
5 Counsel then took the boxes.

6 Q. And is there packing around
7 each of the samples when they were in the
8 boxes?

9 A. There was some -- not around
10 each individual sample. But to prevent
11 them from jostling around.

12 Q. Okay. How was each sample
13 stored at the museum when it's in --
14 strike that.

15 You had said that for each
16 sample you would take it out of an
17 acetate wrapping, correct?

18 A. Acid-free tissue paper.

19 Q. Acid-free tissue paper. So
20 when it's stored, it's in acid-free
21 tissue paper, correct?

22 A. Most of them, yes. The ones
23 that would have acid-free tissue paper
24 are some of the older ones where the

1 printing was done on the metal container
2 because it might -- you know, you don't
3 want the paint to flake off at a certain
4 point in time. So the ones that
5 didn't -- were not completely wrapped in
6 acid-free tissue paper had a spacer of
7 acid-free tissue paper in between, in the
8 boxes.

9 Q. In the boxes that are
10 packed?

11 A. In the -- in the archival
12 boxes in the archives.

13 Q. In the boxes where they're
14 stored?

15 A. Yes.

16 Q. Okay. When they're taken
17 out of those storage boxes and put into
18 the packing boxes, was each bottle
19 also -- each sample separated from the
20 other samples?

21 A. Some were, some were not. I
22 believe they were just packed upright so
23 that they wouldn't jostle.

24 Q. Okay. Let's talk about the

1 J&J museum. I think you had testified
2 that there is a new J&J museum that
3 opened in May of 2016; is that correct?

4 A. Correct.

5 Q. Okay. Is that the only
6 Johnson & Johnson museum?

7 A. That is the only one at
8 corporate. There might be other groups
9 that consider they have a museum. But it
10 might be just a glass case with things in
11 it.

12 Q. Okay. So are you aware of
13 any other subsidiaries of Johnson &
14 Johnson that might have what they
15 consider to be a museum?

16 A. No.

17 Q. Is the museum owned by
18 Johnson & Johnson?

19 A. Yes.

20 Q. Is the museum operated by
21 Johnson & Johnson?

22 A. Yes.

23 Q. You testified earlier that
24 there is a -- there's security at the

1 museum, correct?

2 A. There is security three days
3 a week when we are open for visits.

4 Q. And can you describe for me
5 what you mean by open for visits?

6 A. So the museum is open
7 Mondays, Wednesdays, and Fridays between
8 10:00 a.m. and 5:00 p.m. for employees,
9 contractors who work on the campus,
10 retirees, and their escorted guests to
11 visit.

12 Q. When you say escorted
13 guests, can you explain to me what you
14 mean by escorted guests?

15 A. Sure. Partners they are
16 working with. A lot of employees want to
17 bring their families to visit the museum,
18 so families, spouses, families.

19 Q. And I guess what I'm trying
20 to understand is when you say escorted
21 guest, if I'm a J&J employ -- if I'm a
22 Johnson & Johnson employee and I go to
23 the museum, I can bring my family and I'm
24 considered to be the escort?

1 A. That is correct. They would
2 have to register in advance and sign in
3 like any visitor to our campus. But yes,
4 that is correct.

5 Q. And is -- as it relates
6 specifically to talcum powder products,
7 the current museum that opened May of
8 2016, there are only the two items that
9 we previously discussed that are on
10 display in the museum; is that correct?

11 A. That is correct.

12 Q. Okay. Is the storage area
13 of the museum physically connected to the
14 actual museum itself?

15 A. It is in the same building.
16 But it is card key access, restricted
17 access.

18 Q. And who has access to that
19 storage facility?

20 A. I do. Some facilities folks
21 do, because they need to do cleaning and
22 maintenance, and the general manager of
23 the museum has access.

24 Q. And who's the general

1 manager of the museum?

2 A. Lauren Haber.

3 Q. H-A-B-E-R?

4 A. Yes, that is correct.

5 Q. And do you report to Lauren
6 Haber?

7 A. No, I do not. She manages
8 the space, events and things like that,
9 if people want to register to visit,
10 things like that. But she does not work
11 with the archives.

12 Q. And other than yourself and
13 Lauren, who is it that you said has
14 access to the room?

15 A. There are facilities
16 cleaning staff have access so they can
17 clean. When I say the space, it's
18 through the office space, the restricted
19 access space, so they clean the office
20 space.

21 Q. Facilities people
22 wouldn't -- wouldn't have a need to go
23 into the storage space for any reason
24 that you're aware of, would they?

1 MS. FOURNIER: Objection.

2 THE WITNESS: They

3 shouldn't.

4 BY MR. LAPINSKI:

5 Q. Okay. You said that there
6 is a -- it's a card key access. Is
7 entrance to the storage area tracked?

8 A. I believe if it's card key
9 access, they would have the ability to
10 track it.

11 Q. Okay. And do you know -- do
12 you know by whom that's tracked?

13 A. Security.

14 Q. Are you aware of any
15 unauthorized people entering the storage
16 area during the time that it's been in
17 existence?

18 A. I'm not aware of that.

19 Q. And like the museum, is this
20 current storage -- has this current
21 storage facility been in existence since
22 May of 2016?

23 A. Correct.

24 Q. I think I asked you this

1 earlier. Are there employees who work in
2 the museum?

3 A. Just me and occasionally the
4 general manager. And three days a week
5 there's security at the front desk.

6 Q. And when you're working --
7 working in the museum, what is the role
8 that you're playing inside of the museum
9 while you're working there?

10 A. So my office space is there,
11 and so I do what I generally do over the
12 course of my -- with the course of my
13 workday.

14 Did you want me to go
15 into --

16 Q. Unless you were going to
17 add -- unless you were going to add
18 something else that you do.

19 A. No.

20 Q. Okay. What are -- what are
21 your job responsibilities within the
22 museum?

23 A. So as noted on my CV, I do
24 sort of all of the things there. So I

1 manage and maintain the archives. I
2 research stories from Johnson & Johnson
3 history, so I'd go into the archives to
4 do research for that.

5 I respond to requests. A
6 lot of people have questions about some
7 aspect of the company history. So I
8 would respond to those things. I curate
9 exhibits in our museum.

10 Q. Prior to May of 2016, was
11 there a Johnson & Johnson museum located
12 at a different location?

13 A. It was located at the same
14 location.

15 Q. And like the current museum,
16 was it a museum that was accessible to
17 employees and personnel?

18 A. Only by appointment.

19 Q. And for how long had that
20 museum been in place before the new
21 museum opened in 2016?

22 A. Since the 1960s in that
23 building.

24 Q. And was it in the same

1 location since the 1960s?

2 A. It was.

3 Q. And what is that location?

4 A. That is our power house
5 building. It is a 1907-built building on
6 our campus.

7 MS. FOURNIER: Counsel, when
8 you find a natural breaking point,
9 do you mind? We are at not quite
10 an hour. But I would like to take
11 a break.

12 MR. LAPINSKI: That's fine.
13 We can go off the record.

14 THE VIDEOGRAPHER: The time
15 is 11:42 a.m. We are off the
16 record.

17 (Lunch break.)

18 THE VIDEOGRAPHER: We are
19 back on the record at 12:46 p.m.

20 BY MR. LAPINSKI:

21 Q. Good afternoon,
22 Ms. Gurowitz. Before the break we were
23 talking about physical locations of J&J
24 museums. I believe you testified prior

1 to May of 2016 there was a J&J museum
2 that had been in existence since the
3 1960s; is that correct?

4 A. That is correct.

5 Q. Okay. I'm going to hand you
6 a document that I've marked as Exhibit 6.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-6.)

10 BY MR. LAPINSKI:

11 Q. And this is a document dated
12 March 19, 1982. And it's on Johnson &
13 Johnson letterhead. If you would just
14 take a minute and review that document
15 and then let me know after you've had an
16 opportunity to review it.

17 A. I'm familiar with this
18 document.

19 Q. Okay. Earlier you had
20 testified that you had done a search for
21 documents that may be relevant to your
22 testimony, correct?

23 A. Correct.

24 Q. Is this one of the documents

1 that you found in that search that you
2 considered to be relevant to your
3 testimony?

4 A. Yes.

5 Q. Okay. And if you wouldn't
6 mind, could you please describe for me
7 what this document is?

8 A. This is a document. It's
9 titled "The Kilmer Museum," which was the
10 name of the old Johnson & Johnson museum
11 that had been in this building since the
12 '60s.

13 And it is from L.G. Foster,
14 who at the time was the vice president of
15 public relations at Johnson & Johnson.

16 And the addressees, J.E.
17 Burke was the chairman and CEO of the
18 company. D.R. Clare was the president.

19 And in this memo Mr. Foster
20 states that he and George Frazza who was
21 the head counsel of Johnson --
22 senior-most person at Johnson & Johnson
23 in charge of our law group, decided that
24 when we moved to the new building -- and

1 what they are referencing is Johnson &
2 Johnson's new world headquarters, which
3 was completed and opened in 1982, that
4 the Kilmer Museum, the old museum would
5 be divided into two areas of
6 responsibility and that public relations
7 would assume the responsibility for
8 maintaining the history of the company.

9 Q. So couple questions based
10 upon what you just said.

11 A. Sure.

12 Q. And you can tell that she is
13 a J&J historian, because she does her
14 research or knows.

15 It references the Kilmer
16 Museum.

17 Was the Kilmer Museum -- is
18 it fair to say that the Kilmer Museum is
19 the name of the Johnson & Johnson museum
20 from the 1960s up until the new museum --
21 new museum opened in May of 2016?

22 A. Yes. I did say that the
23 museum had been in that building since
24 the 1960s. It had existed in some form

1 before that in a building that is no
2 longer existing.

3 Q. Okay. So let's -- let's
4 take a step back. From the 1960s until
5 1982, the Kilmer Museum was in the power
6 house building, correct?

7 A. Correct.

8 Q. Now, in 1982, this memo
9 talks about a move to a new building,
10 correct?

11 A. Yes. What they're
12 referencing is the newly constructed
13 Johnson & Johnson world headquarters in
14 New Brunswick.

15 And so what they are talking
16 about was they would take -- they would
17 turn what had been the museum, which had
18 been a collection of showcases with just
19 stuff, items in them, and then products
20 in storage, develop an audio-visual
21 presentation, and then have a very
22 limited number of, as they put it, old
23 product samples in this memo on display
24 in the outer lobby of the tower, which is

1 part of the new world headquarters
2 building.

3 Q. And when was the new world
4 headquarters building completed?

5 A. It opened in 1982.

6 Q. And at the time that the new
7 world headquarters opened, did they have
8 a museum in that building as anticipated
9 by this memo?

10 A. In the new world
11 headquarters building?

12 Q. Yes.

13 A. Not as we consider the
14 museum. What they had was, they
15 referenced the outer lobby by the tower.
16 There was sort of a very shallow showcase
17 there. And inside that showcase was sort
18 of a graphic timeline with very few
19 artifacts in it.

20 Q. Are you aware of whether or
21 not within that showcase there were any
22 samples that are contained on the sample
23 list that we have here?

24 A. I do not know. We don't

1 have information on exactly what was in
2 the showcase.

3 Q. And how long was that
4 showcase in existence?

5 A. It was in existence from
6 sometime circa 1982 to sometime in the
7 1990s or late 1990s, maybe.

8 Q. Do you have any -- do you
9 have any records in your museum files
10 that would lead you to believe that there
11 were sample products -- talcum powder
12 sample products that were put on display
13 in that outer lobby?

14 A. There may have been. It was
15 sort of a historical timeline of the
16 corporation. So it's possible that in
17 that showcase there might have been
18 Johnson's Baby Powder artifact among the
19 other artifacts that was ultimately
20 decommissioned, and a flat screen monitor
21 was put in its place.

22 Q. But you have -- you have no
23 documentation or knowledge that there
24 actually was a Baby Powder product that

1 was in that display?

2 A. I don't. At the time
3 documentation was not kept, so presumably
4 when they took whatever was in there out
5 of it they just would have put it in a
6 box along with all the other boxed up
7 artifacts without documenting what was
8 put and where it was put.

9 Q. Is there a -- are there
10 boxes of artifacts that came from the
11 world headquarter display that we are
12 talking about that were ultimately
13 removed and put somewhere?

14 A. We do not have records of
15 exactly where those products went from
16 the world headquarters display, if they
17 were returned to the collection that was
18 in what was left of the old museum.
19 They -- it would not have been noted.

20 Q. Okay. Going back to the
21 Kilmer Museum, was the Kilmer Museum a
22 public access museum?

23 A. No, it was not.

24 Q. Could you describe for me

1 what the Kilmer Museum was?

2 A. The Kilmer Museum was a
3 collection of artifacts in sort of, you
4 know, wood and glass showcases, sort of
5 very old school. There was no
6 interactivity. They were just sort of in
7 these showcases with no explanation.

8 There was no climate
9 control, so there was no air
10 conditioning. In the summer, it got very
11 hot in there. There was no light
12 control, so if the light was hitting
13 those cases it would fade whatever was in
14 it or, you know, interact with it.

15 Q. In addition to the
16 collection of glass cases that you just
17 referenced, did that museum also have a
18 storage area?

19 A. It did. It had a room with
20 boxes, unlabeled boxes, like, you know,
21 the cardboard banker boxes with the lids,
22 with product artifacts in it.

23 Q. Prior to the 1960s, did J&J
24 have any type of museum?

1 A. From the research I
2 conducted in our archives, the company
3 did. It was the same sort of showcase
4 museum with glass and wood showcases.

5 Q. And do you know where that
6 museum was located?

7 A. It was in a building that no
8 longer exists.

9 Q. And do you know the period
10 of time for which that museum was in
11 existence?

12 A. We have a photograph or two
13 from company newsletters from the 1950s
14 that photographs were taken in that. So
15 certainly it was in existence in the
16 1950s.

17 Q. Okay. And do you have -- do
18 you have any documentation in regard to
19 the samples that are contained on this
20 sample list, that any of those samples
21 were displayed in the Kilmer Museum?

22 A. We don't have documentation.
23 But some -- when we restored the museum,
24 obviously everything had to be taken out

1 of the building so that construction
2 would happen. There were some that were
3 in showcases. They were taken out and
4 packed up along with what was in storage.

5 Q. When you say restored the
6 museum, what are you referring to?

7 A. So the old museum, again I
8 mentioned it's a building that was built
9 in 1907. The museum had been put in
10 there sometime in the early 1960s. And
11 so when the determination was made to
12 restore the museum and make it sort of a
13 modern state-of-the-art museum as we
14 understand museums to be, everything was
15 removed to offsite storage so that the
16 building could be restored, and then the
17 current museum constructed, and along
18 with the proper climate-controlled
19 archival storage inside it.

20 Q. So when -- when you are
21 talking about restoring the museum, are
22 you referring to building the new museum
23 on the main campus?

24 A. Well, so the new museum is

1 in that same building. We restored the
2 1907 building and then created a modern
3 state-of-the-art, interactive,
4 climate-controlled museum with
5 climate-controlled archival storage in
6 the back.

7 Q. So your reference to the
8 restoration of the museum is, after the
9 restoration was complete, you opened the
10 current museum in May 2016, correct?

11 A. Correct, in that same
12 building.

13 Q. Okay. So you were a J&J
14 employee employed as a historian at the
15 time that the old museum samples were
16 boxed up and moved to an offsite
17 facility, correct?

18 A. Correct. And if you
19 remember before, we talked about hiring a
20 team of professional archivists who
21 catalogued the collection for the first
22 time. They are the ones who boxed it up.
23 We moved it to offsite storage during
24 construction. And then once the archives

1 in the building was completed, we moved
2 it back into its new climate-controlled
3 archival storage.

4 Q. Now, do you know whether the
5 archivists at the time that they were
6 boxing up the various samples were
7 recording where those samples had been
8 taken from?

9 A. They were not, because it
10 was not relevant moving forward. So
11 there were some samples that were in a
12 showcase that, again, there was no air
13 conditioning in there. No light control.
14 And others were stored in boxes in a
15 room.

16 So but it wasn't relevant to
17 moving forward. I mean, they all got new
18 catalogue numbers so we could find them
19 in the new storage. But it wasn't
20 relevant to note for the museum purposes
21 where we had -- where they had taken them
22 out of, whether it was from one of those
23 old showcase cabinets or a box.

24 Q. Was there any policy that

1 was in place when these -- when samples
2 were being boxed by the archivists,
3 whether they were supposed to document
4 anything beyond a product number for the
5 particular product?

6 A. Well, they documented what
7 was written on the label, which is also
8 reflected on this sheet. So they
9 documented that. Occasionally they might
10 document condition, is it in good
11 condition? Is the artifact in such
12 fragile condition that you need to get it
13 restored right away? That kind of a
14 thing.

15 Q. Was there a policy in place
16 that they were to document whether or not
17 there was damage -- strike that.

18 Was there a policy in place
19 where they would document recognizable
20 damage to packaging?

21 A. Yes. They generally would
22 document recognizable damage to
23 packaging.

24 Q. And was that documentation

1 provided to you as the historian for the
2 museum?

3 A. Yes.

4 Q. And do you maintain that
5 documentation now?

6 A. I do.

7 Q. Is that on the cloud system
8 that you had previously mentioned?

9 A. Some of it is. If there
10 were significant damage to an artifact,
11 it was listed. But they would provide me
12 a list. Most of those, the things with
13 significant damage, were things that were
14 in paper or cardboard packaging. So it
15 really didn't apply to the powder
16 artifacts, because they were either in
17 tins or plastic.

18 Q. Ms. Gurowitz, going back to
19 your search for documents when you found
20 Exhibit 6, which was the 1982 memo, what
21 were you using as a basis in order to
22 determine whether or not a document was
23 relevant?

24 A. Whether either it related to

1 Johnson's Baby Powder samples, for
2 example, but mostly related to the museum
3 collection, because I was trying to piece
4 together chain of custody for the samples
5 labeled marketing that were sent to
6 offsite storage in this 1982 time frame.

7 I had mentioned before that
8 they sent the products back to the
9 relevant operating company, and then the
10 consumer company put those in offsite
11 storage. So I was trying to piece
12 together chain of custody.

13 Q. Okay. Are you -- and going
14 back to the documentation that we
15 discussed that the archivists would
16 document if they saw damage to a
17 particular product while they were
18 packing it up at the old Kilmer Museum,
19 are you aware of any documentation of
20 talc samples that were damaged in any
21 way?

22 A. There was one plastic
23 container, I remember it was damaged. So
24 if there's a -- plastic gets very brittle

1 with age sometimes. So there was one
2 that -- an older plastic container that
3 the top was off, and so that would have
4 been noted. And I think that actually
5 was -- I think that was one of the
6 samples that went to the lab. So it was
7 noted.

8 Q. Okay.

9 A. And it was just that the
10 plastic had broken over time.

11 Q. If the top is removed from
12 one of the plastic talc bottles, are you
13 able to put that top back on and secure
14 that top again?

15 A. It depends on the condition
16 of the bottle and the age of the bottle.
17 The older plastic bottles get very
18 brittle. So the act of removal could
19 just cause the plastic to fracture into
20 little pieces. So it would depend.

21 Q. Other than the one bottle
22 you're referring to, you're not aware of
23 any other bottles that were listed as
24 damaged when they were packed and stored

1 from the Kilmer house?

2 A. Not off the top of my head.
3 There were some where there were cracks
4 in the caps, I remember, when we were
5 packing them up. But there was one where
6 the top had completely come off.

7 Q. And to the extent that there
8 were cracks within the cap, would that
9 have been documented as well?

10 A. By the archivists or?

11 Q. Well, you had said that it
12 was the archivists who were documenting
13 it. If -- would it have the been
14 documented by the archivists? That would
15 be my first question.

16 A. They were documenting
17 significant damage, so it may have. But
18 they were looking at thousands of
19 artifacts beyond just powder artifacts.

20 Q. Right.

21 A. So it's -- so I would have
22 to check and see. It's possible that
23 they were documenting significant damage
24 like, you know, half of this package has

1 come apart from the other half or
2 something like that, versus there's a
3 crack in a cap.

4 Q. Now, would they document --
5 was anyone else documenting any type of
6 damage?

7 A. When I worked with the legal
8 folks to pack up the samples from the
9 corporate archives to go to the lab, I
10 believe we noticed -- we documented if
11 things were significantly damaged.

12 Q. And that was you that was
13 documenting it, or someone from the legal
14 team that was documenting it?

15 A. It was both of us in tandem.

16 Q. Okay. And is that -- is
17 that documentation something that you
18 maintain now as the historian?

19 A. I believe it was in -- it
20 might be -- I would have to look.

21 It's -- it might be on the transfer
22 sheets or the materials that went with
23 the objects to the lab.

24 Q. Okay. I'm going to give you

1 another exhibit.

2 (Document marked for
3 identification as Exhibit
4 Gurowitz-7.)

5 BY MR. LAPINSKI:

6 Q. We'll mark this as
7 Exhibit 7. This is a little bit
8 difficult to read. This is how it was
9 produced to us.

10 This is a March 9, 1951,
11 draft memo on Johnson & Johnson
12 letterhead.

13 If you would take a minute
14 to review that and just let me know after
15 you've had an opportunity to review it.

16 A. Sure.

17 I have reviewed it.

18 Q. Okay. Before we -- I ask
19 you questions about this document, going
20 back to the talcum powder bottle that we
21 discussed where the top was off.

22 Do you recall what the
23 sample number was of that particular
24 bottle?

1 A. I don't offhand. But it was
2 one that had a very square profile. So
3 it would not have been a super recent
4 one.

5 It would have been --
6 anytime between 1963 and the late 1980s.

7 Q. And are you aware of whether
8 there was any powder inside of the
9 container?

10 A. There was, which is why we
11 were concerned to store it upright,
12 because if it tipped over it would spill.
13 I believe it was put in a bag so that --
14 and baggy so it wouldn't -- in case it
15 did get jostled the contents wouldn't
16 come out.

17 Q. And that was put in a bag at
18 the time that you prepared it for
19 shipment to the lab?

20 A. We did -- I believe -- we
21 did something to it so that it would --
22 that the top was secure in case it got
23 jostled because we realized that the top
24 was open.

1 Q. Okay. And just so that I
2 can confirm on my end, the timing that we
3 are talking about with that particular
4 sample deals with you preparing the
5 samples to go to the lab as compared to
6 that sample being taken from the old
7 museum and put in storage until the new
8 museum was complete, correct?

9 A. That's correct. Although it
10 had been stored upright for obvious
11 reasons so that it didn't spill.

12 Q. Okay. Going back to the
13 document that I handed you, which is
14 Exhibit 7. Have you seen that document
15 before?

16 A. It's -- it's hard -- from
17 the copy, it's hard to tell. I may have.
18 But I couldn't say for sure.

19 Q. Is this one of the documents
20 that you found when you were doing a
21 document search in preparation for today?

22 A. I honestly don't remember.

23 Q. This document was produced
24 to us, and I understand that it's a draft

1 document. But I have a couple questions
2 about some information that's in here.

3 And again, this is a
4 March 1951 document. And if you look on
5 the first line, it says, "Henceforth the
6 law department museum will be located on
7 the ground floor directly beneath the law
8 department."

9 My question is, are you
10 familiar with the law department museum?

11 A. The law department museum, I
12 think what they are referring to here is
13 that collection that's later referred to
14 as the Kilmer Museum. And the law
15 department kept it because they wanted to
16 keep a trademark history so they can tell
17 when labeling or package shape changed.

18 Q. And are you aware of whether
19 or not there were any talcum powder
20 products that were part of the law
21 department museum?

22 A. I don't have any
23 documentation that says they definitely
24 would -- were, but I think it's safe for

1 us to assume that the collection that was
2 in the old Johnson & Johnson Kilmer
3 Museum was what they're more or less
4 referring to here.

5 Q. Okay. Now, the Kilmer
6 Museum, starting in the 1960s and this
7 memo being from 1951, there's a nine-year
8 period of time between that where there
9 may have been products that came and
10 went, were discarded, et cetera?

11 A. It's possible.

12 Q. And there's no documentation
13 to confirm that products that were law
14 department museum actually did make their
15 way into the Kilmer Museum, correct?

16 A. We do not have that
17 documentation.

18 Q. Now, if you go to the second
19 paragraph. The second sentence in the
20 second paragraph says, "It has not always
21 been the practice to forward samples of
22 each of our products to the museum, and
23 unfortunately some appear to be missing."

24 Is there now a policy in

1 place for samples of Johnson & Johnson
2 products to be forwarded to the museum?

3 A. There is not.

4 Q. Do you know of any period of
5 time that there was actually a written
6 policy put in place where product samples
7 would be forwarded to the museum?

8 A. Yes, I do.

9 Q. Okay. When -- when was that
10 policy first put in place?

11 A. As best as we can -- as best
12 as can be pieced together from the
13 documentation we do have, sometime from
14 the 1950s through the 1970s. That was
15 discontinued when it was decided to
16 disband the museum as per the 1982 memo.

17 Q. And what specifically was
18 that policy?

19 A. As best as I was able to
20 piece together from the existing records,
21 it was a policy that when the packaging
22 or labeling of something changed, they
23 were to send a sample to the museum.
24 Again, the law department was keeping

1 this as a trademark history so if they
2 needed to look back on all of the
3 historical iterations of a trademark,
4 they would be able to do that.

5 Q. Other than with the change
6 of packaging, were there any other
7 requirements or policies that samples be
8 sent to the museum?

9 A. I'm sorry. I'm not sure I
10 understand the question.

11 Q. I believe what you just
12 testified was that the policy that was in
13 place from the 1950s to the 1970s was
14 that product samples would be sent to the
15 museum when there was some type of a
16 label change, correct?

17 A. Yes.

18 Q. Other than the requirement
19 that samples be sent to the museum upon a
20 label change, were there any other
21 requirements for samples to be forwarded
22 to the museum?

23 A. If the packaging changed in
24 some -- in some way. If they changed the

1 shape of the packaging or they decided on
2 a new size or a new style, then that
3 would have met those requirements.

4 Q. And those samples that were
5 sent to the museum, is it your
6 understanding that to the extent any such
7 samples were sent to the museum, they are
8 now part of the sample list that we're
9 discussing here today?

10 A. I was able to trace some and
11 to determine that yes, you can make
12 correlation with some of them. That is
13 on the list that is labeled as marketing,
14 that department name list, the things
15 that were sent to offsite storage in
16 1982.

17 Q. So pursuant to the policy
18 that we were just discussing, any
19 products that were produced to the museum
20 pursuant to that policy were ultimately
21 sent to offsite storage and are contained
22 in the offsite storage list that we have
23 here?

24 A. Yes. They would have -- so

1 the collection was culled, as we know
2 from that memo. Things were sent back to
3 the operating companies. The operating
4 company then sent that to offsite
5 storage. A much smaller part of that
6 collection was kept in the corporate
7 museum, and those are reflected in the
8 museum -- the part -- the section with
9 the museum number that were catalogued by
10 the archivists.

11 That being said, obviously
12 there are samples and artifacts that
13 predate this 1950s policy. We have no
14 idea how they got into the collection.
15 There is no documentation about that.

16 Q. Okay. In your answer you
17 had referenced a memo, and you said
18 pursuant to the memo samples were sent
19 back to the operating companies.

20 Did I hear you correctly?

21 A. Yeah. So there's this memo
22 from March 19th, 1982. And then there
23 were the transfer sheets from 1982.

24 Q. Okay. So that's what I'm --

1 I wanted to be able to clarify. When you
2 referred to the memo, you were referring
3 to the 1982 memo which is Exhibit 6 that
4 discusses, for lack of a better term, the
5 breakdown of the museum, correct?

6 A. Correct.

7 Q. Okay. So samples that had
8 been collected and maintained from the
9 1950s to the 1970s pursuant to the policy
10 were stored at the museum, correct?

11 A. At one time, yes.

12 Q. And then in and around 1982,
13 the samples that were at the museum were
14 sent back to the various operating
15 companies from which they had been
16 produced, correct?

17 A. Many of them were, yes. A
18 smaller amount was kept in the corporate
19 collection.

20 Q. Okay. So using the sample
21 list, the documents that are listed on
22 the offsite storage list will also
23 include some samples that had been
24 maintained at the museum for years prior

1 to 1982?

2 A. That's correct.

3 Q. For the -- strike that.

4 Other than the law

5 department museum that is referenced in
6 the 1951 draft memo, the Kilmer Museum
7 that we've spoken about. And the latest
8 Johnson & Johnson museum that you oversee
9 have there been any other Johnson &
10 Johnson museums?

11 A. There have been things that
12 were referred to as museum. But they may
13 not be a museum in the way that we
14 understand it.

15 There is a Shower to Shower
16 sample that says, "Property of the PPC
17 Museum," Personal Products Company. It
18 was an operating unit that no longer
19 exists at one time that marketed Shower
20 to Shower.

21 I don't have -- it's in a
22 building that's no longer there. There's
23 nobody left who would remember that.

24 And so we don't know what

1 they mean by museum. Probably it was not
2 a museum the way we understand -- the way
3 we understand a museum to be. It likely
4 was probably a showcase somewhere.

5 And also the -- four
6 samples, the samples that were sent from
7 the UK, they were referenced as having
8 been on a museum on site. But the person
9 who made that reference said that the
10 museum was actually a glass case with
11 stuff in it.

12 Q. Okay. To your knowledge,
13 there -- other than the three museums
14 that we talked about from a Johnson &
15 Johnson perspective, there were no other
16 official museums?

17 A. To my knowledge, that's
18 correct.

19 Q. In your current role
20 overseeing the museum, is there a written
21 policy in place for the procurement of
22 product samples for the museum?

23 A. There is not.

24 Q. And has there ever been any

1 type of written policy in regard to the
2 procurement of product samples for the
3 museum?

4 A. There is this 1951 policy
5 that's Exhibit 7 that said that samples
6 should be sent. And again, when they had
7 a change in trademark somehow, they would
8 send a sample.

9 Q. And other than this draft
10 document, are you aware of any other
11 written documentation that would outline
12 those policies and procedures?

13 A. Are you referring to --
14 you're referring to the old policy?

15 Q. Well, the 1951 policy is
16 just a draft memo. And I'm just asking
17 whether or not there were any type of
18 actual written policies that were
19 incorporated that you're aware of.

20 A. I think there was something
21 else that was provided as part of me
22 looking through the records and finding
23 it. But other than that specific policy
24 that's encompassed by those documents,

1 I'm not aware of other specific policies.

2 Q. And are they documents that
3 you reviewed in preparation for today's
4 deposition?

5 A. Yes.

6 Q. And do you -- can you
7 describe for me what those documents were
8 as far as the date of those documents,
9 and any other information you may have in
10 regard to those documents?

11 A. I think -- I think one of
12 them was undated. So I don't know when
13 the date was. Although it looks like it
14 was typewritten, so we can infer that
15 they used a typewriter that it's
16 certainly not recent.

17 It did say something about
18 when there was a change to the labeling
19 or packaging, send a sample to the
20 Johnson & Johnson museum.

21 And they were referenced by,
22 you know, merchandising notices that said
23 you are supposed to list which
24 merchandising notice this would be. So

1 in other words, if they made the type
2 bigger, they would -- might be -- they
3 might -- they would list that and say
4 this is the packaging change that
5 happened as a result of -- we made the
6 logo bigger, or something like that.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-8.)

10 BY MR. LAPINSKI:

11 Q. I'm going to mark this as
12 Exhibit 8. I'm going to hand that to
13 you, and I'll ask you to take a look at
14 that and describe it.

15 MS. FOURNIER: She is so
16 good at describing.

17 THE WITNESS: Yes, that is
18 the document.

19 BY MR. LAPINSKI:

20 Q. All right. Before we
21 start -- before we start talking about
22 this document that I've marked as
23 Exhibit 8, the documents that, similar to
24 Exhibit 8 that you had looked at when --

1 let me take a step back.

2 Did you bring any documents
3 with you here today other than the
4 document that we previously marked as
5 Exhibit 5, which was the e-mail with the
6 various peoples names?

7 A. No, I did not.

8 Q. Okay. Other than the
9 document that you have in front of you
10 now which has been marked as Exhibit 8,
11 approximately how many other documents
12 were there that you reviewed and relied
13 upon in order to refresh your
14 recollection in preparation for today?

15 MS. FOURNIER: Objection to
16 form.

17 THE WITNESS: I think other
18 than what's in front of me --
19 front of us, that's it. That's
20 what I reviewed.

21 BY MR. LAPINSKI:

22 Q. If we can go back to
23 Exhibit 8. And you had started to
24 describe the document in great detail

1 before I had it in front of me. So I'm
2 going to ask you to kind of go through
3 this again.

4 Is it your understanding
5 that Exhibit 8 is the written policy that
6 you had been referring to about the
7 provision of product samples to the
8 museum?

9 A. It appears to be that, yes.

10 Q. And it's your understanding
11 that this policy was in place from
12 approximately the 1950s to the 1970s?

13 A. Well this references a date
14 in 1979 and '82. So it certainly was in
15 place -- certainly some iterations of
16 this policy were in place over that time.

17 Q. Okay. And then it's your
18 understanding that after 1982, that was
19 no longer a policy?

20 A. Correct.

21 (Document marked for
22 identification as Exhibit
23 Gurowitz-9.)

24 BY MR. LAPINSKI:

1 Q. I'm going to hand you a
2 document that's going to be marked as
3 Exhibit 9. I'll ask you to just take a
4 minute and take a look at that. Just let
5 me know when you're done reviewing and
6 ready to answer questions on that.

7 A. I'm done reviewing.

8 Q. Okay. Have you seen this
9 document before?

10 A. I don't believe I have, no.

11 Q. Okay. This is a document
12 that was produced, and it's a handwritten
13 document with some notes on it.

14 First of all, do you know
15 who Marilyn Rondelli is?

16 A. No, I do not.

17 Q. There is -- the next line
18 says, "Baby products, test materials
19 sent." And I believe that's 1/1983.

20 Do you have any idea what
21 that would be a reference to?

22 A. I do not.

23 Q. Do you know whether in and
24 around the January 1983 time frame,

1 talcum powder products would be included
2 in baby products?

3 A. I don't have any information
4 they would or not. So I'm unable to
5 determine that.

6 Q. If you go to the second
7 line, it refers to ortho products. Do
8 you know who Harry Grigg is?

9 A. I do not.

10 Q. On the third line it refers
11 to McNeil Consumers. Do you know who
12 Jack McCann is?

13 A. No, I do not.

14 Q. Next line that refers to
15 McNeil Pharmaceutical. Do you know who
16 Ron Dahlen is?

17 A. I do not.

18 Q. And then the last line it
19 refers to personal -- well, there's no
20 name there with Personal Products.

21 Do you know whether or not
22 Baby Powder products would have been
23 considered a group of personal care
24 products or Personal Products in 1983?

1 A. Personal Products was the
2 name of an operating unit. So they would
3 not have marketed baby products from that
4 operating unit.

5 Q. Do you currently have a
6 written policy in place for the
7 maintenance of historical samples at the
8 J&J museum?

9 A. When you say historical
10 samples, are you referring to them in the
11 sense of the 1951 memo where they said
12 send samples, or are you referring to the
13 collection that's part of the corporate
14 archives in the museum?

15 Q. I'm referring to the
16 collection that's part of the corporate
17 archives now.

18 So we previously -- we've
19 previously discussed that there are
20 samples of all sorts of products that are
21 on display in the current museum, and
22 then there are also samples of all sorts
23 of products that are currently maintained
24 in archives, correct?

1 A. Correct.

2 Q. Okay. And my question is
3 whether or not there is a written policy
4 in regard to the maintenance of those
5 archive samples.

6 A. I would have to look back
7 and see if the policy is written. But
8 the policy as it is followed would be the
9 policy of any archives, that they must be
10 maintained in a climate and
11 light-controlled storage area in
12 acid-free storage.

13 Q. And if the policy was a
14 written policy, where would that written
15 policy be maintained?

16 A. I would have an electronic
17 copy of that.

18 Q. Do you know when that policy
19 would have gone into effect?

20 A. It would have been created
21 by the archivists who professionally
22 catalogued the collection. So sometime
23 in the 2014, 2015 time frame.

24 Q. And prior to that 2014 or

1 2015 time frame, are you aware of any
2 type of written policy that was in place
3 in regard to the storage of samples?

4 A. No, I'm not. There was no
5 policy as far as I'm aware of.

6 Q. Prior to 2014, one of your
7 responsibilities as the historian was to
8 be able to maintain samples, correct?

9 A. When you're referring -- you
10 mean -- I just want to ensure that I
11 understand the question correctly. Do
12 you mean the artifacts in the museum
13 building in the corporate archives
14 collection?

15 Q. Correct, yes. So -- and let
16 me -- let me rephrase the question so
17 that I actually understand along with
18 you.

19 Prior to -- prior to the
20 archivist policy that was put in place in
21 and around 2014, you were responsible for
22 the care and maintenance of product
23 samples that were at the museum, correct?

24 A. Correct, to the best of my

1 ability, under the conditions they were
2 in before the museum restoration project.

3 As I mentioned, they were
4 not stored in a climate-controlled area.
5 I was not -- there was nothing to be done
6 to influence that. So I maintained them
7 as best I could under those conditions.

8 Q. Okay. Was there -- is there
9 currently a policy in place regarding the
10 intake of samples into the museum?

11 A. Yes. We have an
12 accessioning policy.

13 Q. And is that a written
14 policy?

15 A. It's -- I believe I may have
16 a draft of it. But it's -- right now it
17 may be largely unwritten.

18 Q. Okay. When you're in a
19 situation where the only employee that's
20 there, it's not necessarily necessary to
21 have the written policies since you are
22 the only one that's enforcing it?

23 A. That's true. And -- you
24 know, so it probably exists in a draft

1 form. It may not exist in a final form
2 right now. But...

3 Q. So what is that -- what is
4 that policy?

5 A. So the policy is that the
6 artifact have to be relevant to major
7 stories in Johnson & Johnson history.
8 They have to be in good to excellent
9 condition.

10 They -- so in other words,
11 if something were in very bad shape,
12 rusty, dirty, falling apart, it would not
13 meet the accessioning criteria. If it
14 was an artifact that was a product from
15 another company, that wouldn't meet the
16 accessioning criteria. If it were -- if
17 it were something that -- so if it was,
18 you know, something that did not help us
19 illustrate a major story about Johnson &
20 Johnson history, it also might not meet
21 the accessioning criteria.

22 Q. And about how long ago did
23 you start to implement that particular
24 policy?

1 A. With the restoration and
2 opening of the new museum.

3 Q. Okay. Prior to -- prior to
4 the opening of the museum, was there any
5 policy that you had in place as far as
6 the intake of samples?

7 A. Just that -- basically that
8 possibly informally. But as I mentioned
9 before we get a lot of donations.

10 Sometimes I would come back
11 from lunch to find an anonymous donation
12 on my desk. No note, no identifying
13 information. I would ask people, "Did
14 you see who dropped this off?" They
15 hadn't. So things would show up on my
16 doorstep as it were.

17 Q. Now, as it relates to talc
18 samples, there's only one instance that
19 you're aware of where that happened with
20 talc samples, correct?

21 A. Correct. Most of them were
22 other products.

23 Q. Okay. Is there any type of
24 policy in place for the current museum as

1 far as the removal of samples from the
2 museum?

3 A. Yeah. Something could be
4 deaccessioned if its condition was so
5 deteriorated that it posed a danger to
6 the artifacts stored around it.

7 For example, if it was a
8 product that was liquid in it and that
9 was leaking or something like that, or if
10 it was in such bad condition that we
11 could never exhibit it and it wasn't the
12 only one of its kind, so those would be
13 examples of why something might be
14 deaccessioned. Or if it had completely
15 no relation to Johnson & Johnson or its
16 history. Those could be reasons why
17 something would be deaccessioned.

18 Q. Now, would that apply to
19 both items that are on display as well as
20 items that are maintained in storage?

21 A. It would be, although, you
22 know, we try to ensure all of the items
23 that are on display are in -- the ones
24 that are in better condition.

1 Q. How about -- well --

2 A. With some exceptions
3 obviously.

4 Q. In a -- in a situation that
5 you just described, if there was a
6 product that was in such a condition that
7 you were going to remove it, what would
8 you do with that product?

9 A. It depends on what it --
10 what it was. We would dispose of it. We
11 would work with our facilities folks to
12 dispose of it in the best -- whatever
13 manner they advised.

14 Q. So it would be disposed of,
15 but it would be disposed of in a way
16 that, for example, environmentally may
17 have been the environmentally appropriate
18 way to dispose of it?

19 A. Correct.

20 Q. How about removal of samples
21 from the museum not for purposes of
22 disposal, but because someone wants to
23 take something out of the museum? Is
24 there a policy in place for that?

1 MS. FOURNIER: Objection.
2 Outside the scope. You can go
3 ahead and answer.

4 THE WITNESS: Okay. We
5 don't allow people to borrow
6 things from the museum or
7 archives. It's not a lending
8 library.

9 Occasionally we might get a
10 request from another museum who
11 asks for a loan for something to
12 go on exhibit.

13 The protocol among museums
14 is they fill out paperwork that
15 details the climate and humidity
16 control they have, how they're
17 going to safely transport it and
18 exhibit it and things like that.
19 And you can either agree to the
20 loan or not agree to the loan.

21 BY MR. LAPINSKI:

22 Q. Are you aware of any
23 situations since you've been in your
24 position at Johnson & Johnson where

1 you've loaned a talc sample to another
2 museum?

3 A. No.

4 Q. Are you aware of any time
5 during your tenure at Johnson & Johnson
6 that you have loaned any sample that's on
7 these lists to anyone other than a
8 museum?

9 A. I am not aware. But I did
10 not have charge of the archives until
11 2006. So I -- there is no information
12 about what was done before then.

13 Q. Okay. If there -- similar
14 to what you talked about with the museum
15 protocol, was there a policy in place
16 when you started in 2006 that if a sample
17 were to be removed from the museum, the
18 removal of that sample would be
19 documented?

20 A. I would have documented it.
21 When I started in 2006, nobody --
22 nobody -- before that, nobody really had
23 charge of the archives. They were in the
24 museum building, and lots of people had

1 access to that building. The corporate
2 art, like the stuff that people, when
3 they moved into the office, they wanted
4 artwork to hang on their walls, was
5 stored in the back of the building. So
6 there were people in and out of the
7 building looking at corporate art.

8 The room that the
9 archives -- the artifacts were stored in
10 was not locked. Anyone could go in and
11 out of there. I put a lock on the door.
12 So before that it was open to whoever
13 accessed the building. So -- and we had
14 -- there was no way of knowing if, you
15 know, who came in and out of that room.

16 Q. And are you aware at any
17 time of anyone accessing the storage in
18 the archives at any time prior to you
19 putting a lock on the door?

20 A. Well, people would have gone
21 in. Certainly the corporate librarian
22 would have gone in. She had charge of
23 that before I did. So -- and there might
24 have been -- I don't remember, I'm sorry,

1 when she retired. But there might have
2 been an interim time where sort of nobody
3 really had really charge of that.

4 So it's possible that people
5 did go in and out.

6 There are things I remember
7 looking at when I was first hired as a
8 research assistant that were not part of
9 the archives when I took over charge of
10 it.

11 So clearly -- they were
12 paper documents. So clearly, you know,
13 some things had been removed.

14 Q. So you said when you were an
15 intern -- when you were an intern, you
16 recall looking at things that were
17 maintained in the archives that were no
18 longer there when you started --

19 A. So, yeah, when I was first
20 hired as a research assistant. And let
21 me preface, they were paper artifacts.
22 They weren't related to talc. They were
23 letters from U.S. presidents. And so
24 when I got the management of the archives

1 they were no longer in the paper
2 archives. That's what I was referring
3 to.

4 Q. Okay. Understood. Do you
5 have any knowledge of any talc-related
6 archives being removed from storage prior
7 to you putting a lock on the door?

8 A. I do not knowledge of that.

9 Q. Okay. Do you have any
10 knowledge of anyone accessing any of the
11 talc samples prior to 2006 before you put
12 the lock on the door?

13 A. I do not have knowledge of
14 that.

15 Q. Since 2006 when you assumed
16 responsibility, are you aware of any talc
17 samples being removed from the archives?

18 A. I am not aware of that.

19 Q. Are you aware of any talc
20 samples having been destroyed that had
21 previously been maintained in the
22 archives?

23 A. I'm not aware of that.

24 Q. Since 2006, are you aware of

1 any talc samples being temporarily
2 removed from the archives for purposes of
3 testing?

4 A. I'm not aware of that.

5 Q. To the extent that any
6 archive had been removed for such a
7 purpose, is that something that you would
8 have documented?

9 A. If -- if I knew about it,
10 yes. I mean, I had a key and obviously
11 our facilities people had a key to the
12 door. But, I mean, these are historic
13 artifacts. So, you know, so there was
14 very little interest in them.

15 MR. LAPINSKI: Let's go off
16 the record. Let's take a
17 five-minute break.

18 THE VIDEOGRAPHER: The time
19 is 1:35 p.m. We are off the
20 record.

21 (Short break.)

22 THE VIDEOGRAPHER: We are
23 back on the record at 1:54 p.m.

24 BY MR. LAPINSKI:

1 Q. Ms. Gurowitz, we've talked
2 previously about the -- briefly about the
3 four samples that were sent from the
4 United Kingdom by Dr. Hopkins correct?

5 A. Yes.

6 Q. And we also talked about
7 certain samples that are on our list that
8 were provided to Johnson & Johnson by
9 Bill Ashton's daughter at some point in
10 time, correct?

11 A. That's correct.

12 Q. And we also talked about the
13 item New Museum 3, which was an item that
14 was left at the security area at the
15 museum and you don't know where that came
16 from, correct?

17 A. Yes, correct.

18 Q. Other than those three --
19 those three examples there, are you aware
20 of -- strike that.

21 Other than those three
22 examples there, is it fair to say that
23 the other samples have been in the
24 control of Johnson & Johnson since the

1 time they were manufactured?

2 MS. FOURNIER: Objection.

3 THE WITNESS: We cannot say
4 that. While I was able to piece
5 together pieces of their history
6 and continuity and where they've
7 been, there's not enough
8 information to place -- to create
9 an entire chain of custody.

10 The only thing that I was
11 able to create or to research or
12 really more or less complete chain
13 of custody for were the PTI
14 samples, because there was good
15 information.

16 For the others, we just do
17 not know how they got into the
18 collection originally for many of
19 them.

20 There are, as I mentioned
21 before, many samples that are
22 older than those marketing
23 notices, that said, "Hey, if you
24 change your packaging, send us a

1 sample." We don't know how those
2 got into the collection. So --
3 and as well as, you know, other
4 ones that you cannot piece
5 together a complete chain of
6 custody. You can piece together
7 pieces of chains of custody, but
8 not a complete chain of custody.

9 BY MR. LAPINSKI:

10 Q. And other than the three
11 examples that we spoke about, when you
12 did your research, you didn't come across
13 any information to show that the
14 remaining samples were not in J&J's
15 control at any time since the time of
16 manufacture, correct?

17 MS. FOURNIER: Objection.

18 THE WITNESS: There is no
19 information. So I don't have any
20 data or information to base that
21 on. I cannot come to a conclusion
22 about it.

23 BY MR. LAPINSKI:

24 Q. Okay. Going back to the

1 policy we had talked about that was in
2 place from the '50s up until the early
3 1980s about the provision of samples to
4 the museum.

5 Was there a policy in place
6 as to how those samples were supposed to
7 be provided to the museum?

8 A. I haven't seen anything
9 other than those documents. So they were
10 interested in the packaging, how the
11 packaging had changed and the labeling.

12 So I haven't seen any
13 information about how they were provided,
14 whether they had to be full, whether they
15 could be empty. Certainly the packages
16 weren't sealed. Safety seals are a very
17 modern phenomena that happened after the
18 1980s. So historically, you know,
19 products were not sealed.

20 So they could have been
21 provided a variety of ways. It just said
22 whenever you change the label or the
23 packaging, provide a sample.

24 (Document marked for

1 identification as Exhibit

2 Gurowitz-10.)

3 BY MR. LAPINSKI:

4 Q. I'm going to hand to you a
5 document that we are marking as
6 Exhibit 10. And if you could review that
7 document and let me know when you've had
8 an opportunity to review it.

9 A. Yes, I've reviewed it.

10 Q. And have you seen this
11 document before?

12 A. Yes, I have.

13 Q. And what is your
14 understanding of what this document is?

15 A. These are the chain of
16 custody sheets that were filled out when
17 the product artifact or samples, as we
18 call them, were transferred from the J&J
19 museum to the legal folks for
20 transportation to the lab.

21 Q. And on the first page of the
22 document, and actually running throughout
23 the entire document, there's a section
24 that is labeled release by. And there

1 are initials there. Are they your
2 initials?

3 A. They are.

4 Q. Okay. So this chain of
5 custody you released on February 22nd,
6 2018. You released custody of all of the
7 museum samples to a representative of
8 DBR, correct?

9 A. All the museum samples
10 listed in this document, yes.

11 Q. Okay. And going back to
12 testimony that you provided earlier,
13 could you just run through the process
14 that you went through in preparing these
15 samples for shipping?

16 A. So I pulled them from the
17 storage boxes they were in in the
18 corporate archives.

19 As I mentioned before, I
20 wear gloves when I handle artifacts so as
21 not to potentially damage the artifact
22 from, you know, oils on your skin and
23 things like that.

24 So they were taken out of

1 those boxes and they were -- you know,
2 sometimes they were -- I don't remember
3 whether we un- -- some of them had
4 acid-free tissue paper around them. I
5 don't remember whether we unwrapped some
6 of them. Some of them may have,
7 depending on there fragility, been
8 transported with that in place, some not.

9 And then they were then
10 placed in the boxes that were going to be
11 used to transport them to the lab, and
12 then these sheets were filled out.

13 Q. Okay. And when they were
14 placed into the boxes, after you placed
15 them into the boxes, did you seal those
16 boxes?

17 A. The top was put on. I don't
18 know if it was -- I don't remember
19 whether it was sealed with tape or
20 anything like that. They were, you know,
21 like bankers boxes kind of things.

22 Q. And if you would turn to --
23 if you look in the lower right-hand
24 corner, there are Bates numbers on there.

1 All the way -- yes.

2 A. Is this what you're --

3 Q. Yes. If you would turn to
4 the page that ends in 628.

5 And the second entry on that
6 page is for Package Number 2014.001.2455.

7 Do you see that?

8 A. I do.

9 Q. And there's a notation on
10 there in parentheses "Top off."

11 A. I see that.

12 Q. Is that referring to the
13 particular museum sample that you
14 testified to earlier that was produced
15 with the top off?

16 A. I believe that would, yes.

17 Q. And are you aware of any
18 other samples that were produced from the
19 museum that had the top removed at the
20 time it was produced?

21 A. At the time it was produced,
22 no. That's one that came to mind,
23 because at some point in the artifact's
24 history, the top, the plastic top had

1 broken completely off.

2 Q. Is it fair to say if there
3 were other samples that you had taken
4 from the museum in order to produce that
5 were missing the top, you would have
6 documented it for those samples as well?

7 A. If the top was completely
8 off at the time of transfer, yes. It
9 would have -- I'm sure it would have been
10 documented.

11 Q. That was Exhibit 10 that I
12 gave you, right? That's what I marked it
13 as?

14 A. Mm-hmm, yes.

15 (Document marked for
16 identification as Exhibit
17 Gurowitz-11.)

18 BY MR. LAPINSKI:

19 Q. I'm going to hand you a
20 document that we're marking as
21 Exhibit 11. Take a moment to look at
22 that and let me know when you've had an
23 opportunity to review it.

24 A. Okay. Okay.

1 Q. Okay. Have you seen this
2 document before?

3 A. I don't believe I have.

4 Q. Okay. This is a -- this is
5 a chain of custody document. The first
6 Bates number on it is JNJTALC000536610.

7 Ms. Gurowitz, what's your
8 understanding of what this document is?

9 A. It's a chain of custody
10 sheet. It says samples from J&J museum,
11 collected 2/22/18. This is not the set
12 of sheets I signed.

13 Q. Okay. This does indicate
14 that for the -- as you indicated samples
15 from the J&J museum collected on
16 February 22, 2018. Those samples in
17 boxes were transferred from a
18 representative of DBR to Alliance
19 Technologies; is that correct, if you
20 look at the chain of custody line?

21 A. That is what it says on the
22 document.

23 Q. Okay. Are you aware of
24 whether or not in between the time you

1 transferred the documents to DBR and they
2 were subsequently transferred to Alliance
3 Technologies there was anything that was
4 done to the samples?

5 A. I am not aware of any. I
6 have no information on that.

7 Q. Are you aware of whether or
8 not the boxes that are listed here were
9 opened?

10 A. I do not know.

11 Q. Are you aware of whether
12 there was any testing that was done on
13 the product?

14 A. Ultimately? Or --

15 Q. No, in between --

16 A. I do not know.

17 Q. In between --

18 A. I do not know.

19 Q. In between the period of
20 time of February 22nd and March 2nd.

21 A. I do not know.

22 (Document marked for
23 identification as Exhibit
24 Gurowitz-12.)

1 BY MR. LAPINSKI:

2 Q. I'm going to hand you a
3 document that's been marked as
4 Exhibit 12. The first Bates number on
5 this group of documents is JNJTALC005 --
6 actually you know what? You've got to
7 bring them all back in for a second. I
8 apologize. I have them the wrong way.

9 I'm going to give you just
10 that document that's marked as
11 Exhibit 12.

12 Ms. Gurowitz, have you seen
13 this photograph before?

14 A. I have not.

15 Q. Do you know what it's a
16 photograph of?

17 A. It is a photograph of
18 storage boxes.

19 Q. And do you know where this
20 photograph was taken?

21 A. I do not.

22 Q. Do you know whether it was
23 taken at a J&J facility?

24 A. I have no information. I do

1 not know that.

2 (Document marked for
3 identification as Exhibit
4 Gurowitz-13.)

5 BY MR. LAPINSKI:

6 Q. I'm going to hand you a
7 document that's being marked as
8 Exhibit 13.

9 Ms. Gurowitz, have you seen
10 this photograph before?

11 A. I have not.

12 Q. Are you aware of what it is
13 a photograph of?

14 A. It is a photograph of
15 storage boxes.

16 Q. Do you know where this
17 photograph was taken?

18 A. I do not.

19 Q. Is there anything on --
20 anything marked on the boxes in this
21 photograph that would enable you to
22 identify what these boxes are?

23 A. Well, there are Post-It
24 notes that say partial JBP-02 done,

1 partial JBP-06 done, 03 done, and 04
2 done. So presumably the contents of
3 these relate to Johnson's Baby Powder.

4 Q. But you don't know where
5 these pictures generated from?

6 A. I do not.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-14.)

10 BY MR. LAPINSKI:

11 Q. Okay. I'll give that to
12 you. And that's Exhibit 14.

13 Ms. Gurowitz, have you seen
14 this photo before?

15 A. I have not.

16 Q. Do you have an understanding
17 as to what that photograph is?

18 A. Again, it's a photograph of
19 storage boxes.

20 Q. And are you aware of where
21 that photograph was taken?

22 A. I am not.

23 Q. Are you aware of when that
24 photograph was taken?

1 A. I do not know when it was
2 taken.

3 Q. And as to the other
4 photographs that we've looked at which
5 would collectively be Exhibits 12, 13,
6 and 14, are you aware of when those
7 photographs may have been taken?

8 A. I am not aware of when they
9 would have been taken.

10 (Document marked for
11 identification as Exhibit
12 Gurowitz-15.)

13 BY MR. LAPINSKI:

14 Q. I'm going to hand you
15 Exhibit 15.

16 Ms. Gurowitz, have you seen
17 this photograph before?

18 A. I have not.

19 Q. Are you aware of where this
20 photograph was taken?

21 A. I am not aware of that.

22 Q. Are you aware of when it was
23 taken?

24 A. I do not know when it was

1 taken.

2 Q. And do you have any
3 information -- strike that.

4 Do you have any information
5 as to who may have taken this photograph?

6 A. I do not know that.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-16.)

10 BY MR. LAPINSKI:

11 Q. I've marked this photograph
12 as Exhibit 16.

13 Have you seen this
14 photograph before?

15 A. I have not.

16 Q. Are you aware of when this
17 photograph was taken?

18 A. I don't have any information
19 about when it was taken.

20 Q. And are you aware of where
21 this photograph was taken?

22 A. I do not know where it was
23 taken.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-17.)

3 BY MR. LAPINSKI:

4 Q. I've handed you what's been
5 marked as Exhibit 17.

6 Have you seen this
7 photograph before?

8 A. I have not.

9 Q. Okay. Are you aware of when
10 this photograph was taken?

11 A. I am not.

12 Q. Are you aware when the
13 photograph was taken?

14 A. I am not.

15 (Document marked for
16 identification as Exhibit
17 Gurowitz-18.)

18 BY MR. LAPINSKI:

19 Q. I'm handing you a document
20 that's being marked as Exhibit 18. I'll
21 ask you to take a minute or two to review
22 that document.

23 A. Sure.

24 Q. All set?

1 A. Yes.

2 Q. Okay. I've handed you a --
3 before I get to the document.

4 Ms. Gurowitz, how many offsite storage
5 facilities does J&J have for where talc
6 samples are stored?

7 A. Are you talking about -- if
8 I can ask you to clarify. Physical
9 facilities or vendors?

10 Q. Let's start with vendors.

11 A. I believe that Iron Mountain
12 is Johnson & Johnson's offsite storage
13 vendor for anything the company stores
14 offsite.

15 Q. And do you know how long
16 Iron Mountain has been Johnson &
17 Johnson's storage company?

18 A. I do not know that.

19 Q. And just for purposes of
20 clarification, when we say Iron Mountain
21 is Johnson & Johnson's storage company,
22 are we referring to both Johnson &
23 Johnson defendants?

24 A. I believe so.

1 Q. The talc samples that are
2 maintained in the museum, to whom do
3 those talc samples belong?

4 A. The ones that are in the
5 corporate archives?

6 Q. Yes.

7 A. Those are property of
8 Johnson & Johnson.

9 Q. Okay. And how about the
10 offsite samples that are maintained --

11 A. In the offsite storage?

12 Q. Yes.

13 A. Those are property of
14 Johnson & Johnson Consumer.

15 Q. And I don't know if I asked
16 you this. Do you know for how long Iron
17 Mountain has been the offsite storage
18 facility for Johnson & Johnson?

19 A. I do not know that.

20 Q. Do you know which
21 location -- strike that.

22 Do you know which Iron
23 Mountain location the Johnson & Johnson
24 offsite samples were stored at?

1 A. I believe there are two in
2 New Jersey that they were stored at. One
3 is in Monroe, and the other is in
4 Freehold.

5 Q. And have you ever been to
6 either of those locations?

7 A. I have not.

8 Q. Do you know how long the
9 offsite samples have been stored at the
10 Iron Mountain facility?

11 A. I do not know. The transfer
12 sheets, I have seen from 1982. So they
13 were sent to Leahy Business Archives. So
14 at some point they must have been
15 transferred to Iron Mountain when
16 Johnson & Johnson must have at some point
17 switched providers.

18 Q. You said those transfer
19 sheets were from 1982?

20 A. Yes.

21 Q. When was it that you saw
22 those transfer sheets?

23 A. During the process of trying
24 to put together a chain of custody for

1 the offsite samples that were labeled
2 marketing.

3 Q. Is it fair to say that the
4 transfer sheets from 1982 were used by
5 you in order to prepare yourself for the
6 deposition today?

7 A. Yes.

8 Q. Did they provide you with
9 background in regard to the chain of
10 custody of the museum samples?

11 A. They helped shed some light
12 on a very tiny piece of the chain of
13 custody for just the samples marked
14 marketing and offsite storage.

15 Q. So the 1982 transfer sheets
16 did not relate to any of the research and
17 development samples that were maintained
18 in offsite storage?

19 A. No, they do not appear to.
20 Just the marketing ones.

21 Q. And it's your understanding
22 that those transfer sheets document the
23 transfer of marketing samples from
24 Johnson & Johnson to the Leahy Business

1 Storage facility?

2 A. That is what they appeared
3 to do, yes. They are transfer sheets
4 listing items that were moved to offsite
5 storage for Leahy.

6 Q. And included in those items,
7 was it all of the marketing samples that
8 we've been discussing here on the offsite
9 storage list?

10 A. It was -- if not all, it was
11 certainly a good portion of them.

12 Q. Are you able to determine
13 with the information that you have in
14 front of you which marketing samples
15 would have not been included on that
16 transfer sheet?

17 A. In some cases, I can make a
18 correlation with marketing samples that
19 were included. In other cases, you can
20 get close enough to say this either could
21 or could not be included. But not in all
22 cases, there's not enough information
23 there.

24 Q. And upon what would you rely

1 in order to be able to get yourself as
2 close as possible as you indicated?

3 A. So I would compare the
4 information on the transfer sheet --
5 excuse me. I'm just going to find the
6 relevant sheet.

7 So I'm looking at Page 11883
8 under offsite storage. And so what I
9 would do is I look at --

10 Q. I'm going to interrupt you
11 for a second just so we can keep the
12 record straight. You are right now
13 referring to what is marked as Page 36 of
14 91, and it is Page ID 11883, correct?

15 A. That is correct.

16 Q. Okay. So go ahead.

17 A. So what I would do is look
18 at the information contained in the
19 columns that say label, date on
20 container, or wrapping medium, and
21 container volume which references how
22 much volume the container held. It would
23 have been material printed on the
24 container, and then tried to match it up

1 with items that were on the transfer
2 sheet to see if they correlated.

3 Q. Again, you're referring to
4 the 1982 transfer sheet, correct?

5 A. Correct.

6 Q. And you did not bring those
7 transfer sheets here with you today,
8 correct?

9 A. I did not.

10 MR. LAPINSKI: Counsel, I'm
11 going to make a request that those
12 transfer sheets be produced
13 because I don't think that --

14 MS. FOURNIER: They've been
15 produced.

16 MR. LAPINSKI: They've been
17 produced? Were they just recently
18 produced?

19 MS. FOURNIER: I don't they
20 were, no. They were previously
21 produced.

22 BY MR. LAPINSKI:

23 Q. Are you aware of how long
24 the offsite sample -- are you aware of

1 how long the offsite samples were in
2 storage at Leahy business?

3 A. Certainly since 1982. But I
4 do not have an ending date when they
5 ceased to be stored at Leahy.

6 Q. And do you know -- do you
7 know at what point of time -- do you know
8 what facility the offsite samples were
9 stored at just prior to being produced by
10 Johnson & Johnson?

11 A. I do not know what specific
12 facility, but I know there were two
13 facilities in New Jersey that they were
14 stored at. But I don't know which were
15 stored at either one.

16 Q. Is it -- is it fair to say
17 that prior to production by Johnson &
18 Johnson, they were at an Iron Mountain
19 facility?

20 A. It is -- the marketing
21 samples?

22 Q. Yes, the marketing samples.

23 A. It is fair to say that.

24 Q. And do you know at what

1 point in time the marketing samples were
2 moved from storage in Leahy business to
3 storage at Iron Mountain?

4 A. I do not know. We don't
5 have the records that indicate that.

6 Q. Are you familiar at all with
7 the Leahy storage facility?

8 A. I am not.

9 Q. Do you know where it's
10 located?

11 A. I do not.

12 Q. Are you aware of the
13 contractual relationship that Johnson &
14 Johnson had with the Leahy storage
15 facility?

16 A. I am not aware of the
17 specific contractual relationship. But
18 at the time, since the items were moved
19 there, they would have been the storage
20 vendor for the company.

21 Q. And is it -- would it be
22 your position that as a storage vendor of
23 Johnson & Johnson, Leahy Business would
24 not open any of the boxes that it was

1 storing on behalf of Johnson & Johnson?

2 MS. FOURNIER: Objection.

3 THE WITNESS: That -- that
4 would be a question for our
5 records management folks. I don't
6 know what the terms of the
7 contract with them was.

8 BY MR. LAPINSKI:

9 Q. Are you aware of any reason
10 why representatives of Leahy business
11 would go into boxes that were being
12 stored at this facility?

13 A. Again, I -- that would be a
14 question for records management folks.
15 They manage all of the offsite storage.

16 Q. As it relates to chain of
17 custody, is there any reason why you
18 would believe that while the -- while the
19 samples were being stored at Leahy
20 business, they were tampered with at all?

21 A. I have no information about
22 that.

23 Q. And do you know how to spell
24 Leahy in Leahy business?

1 A. I believe it's L-E-A-H-Y or
2 something very close to that.

3 Q. I don't know whether or not
4 I asked this question, but are they a New
5 Jersey organization?

6 A. That, I do not know.

7 Q. Okay. Do you know if the
8 facilities are located in New Jersey?

9 A. That, I don't know. I don't
10 think they're -- I'm not even sure they
11 are still in business actually.

12 Q. When the marketing samples
13 were sent to Leahy business, where were
14 they sent from?

15 A. The marketing samples had
16 been sent, as we've established by
17 looking at the other documents, in 1982.
18 They were closing the Kilmer Museum.
19 They were sent back to the operating
20 unit, so it would have been someone at
21 the consumer company who would have sent
22 them to offsite storage.

23 Q. Is it fair to say that if
24 Leahy had to open any of the boxes that

1 were in storage for Johnson & Johnson
2 they would have notified Johnson &
3 Johnson beforehand?

4 MS. FOURNIER: Objection.

5 THE WITNESS: That, again,
6 would have been part of whatever
7 agreement they had with our
8 records management folks.

9 BY MR. LAPINSKI:

10 Q. As the corporate
11 representative for Johnson & Johnson
12 testifying on chain of custody, is
13 there -- do you have any knowledge of
14 Leahy business tampering with any of the
15 boxes that it held in storage?

16 A. Again, that's sort of --
17 although I am -- I've researched chain of
18 custody, the relationship with our
19 records management organization is
20 outside sort of the area that I look at.

21 So if -- so I don't know
22 what the relationship was, if they had to
23 open a box, did they have to notify
24 records management. I do not know.

1 Q. In your preparation for this
2 deposition and research that you did in
3 order to prepare yourself to testify on
4 chain of custody, do you have any
5 information that would indicate that
6 Leahy Business had at all opened and
7 tampered with the marketing samples that
8 were stored offsite?

9 A. We don't have any
10 information about Leahy Business, what
11 Leahy Business did with the boxes they
12 were storing.

13 Q. And, again, you previously
14 indicated that you don't know when the
15 boxes were transferred to Iron Mountain,
16 correct?

17 A. No. And when I asked the
18 folks I talked to in the marketing group,
19 they -- before it was discovered that
20 these boxes were in offsite storage, they
21 didn't even know they had existed, they'd
22 been there so long.

23 Q. They had been there so long
24 meaning they'd been --

1 A. Since 1982.

2 Q. I'm sorry. Let me -- let me
3 finish my --

4 A. I'm sorry.

5 Q. That's okay.

6 When you say they had been
7 there so long, they had been at Iron
8 Mountain so long?

9 A. They had been in offsite
10 storage so long.

11 Q. Just in offsite storage so
12 long?

13 A. Yes.

14 Q. If you look at the document
15 that I have given you which we marked as
16 Exhibit -- is that 18?

17 A. Yes.

18 Q. The Iron Mountain documents?

19 A. Mm-hmm.

20 Q. Have you ever seen these
21 documents before?

22 A. I believe I have. If not,
23 it was something very similar.

24 Q. Okay. What's your

1 understanding of what these documents
2 are?

3 A. My understanding is these
4 are internal Iron Mountain records.

5 Q. Did you review these records
6 in preparation for your testimony today?

7 A. If this is the same set of
8 records, then yes, I've seen them before.

9 Q. Okay. And when was the
10 first time that you saw them?

11 A. Maybe just a -- two weeks
12 ago maybe, something in that time frame.
13 So very recently.

14 Q. If you would take a look at
15 the description information that's about
16 a third of the way down the page. And if
17 you see, there is an SKP box/barcode
18 number?

19 A. Mm-hmm.

20 Q. Okay. Do you know what that
21 number represents?

22 A. I do not. But I can make an
23 educated inference that it represents a
24 unique number for a particular box.

1 Q. Okay. If you would now go
2 back to Exhibit 16, which is one of the
3 photographs. If you would look in the
4 upper left-hand corner of that
5 photograph, there is a box that has a
6 barcode number of 15140487.

7 Do you see that?

8 A. I do.

9 Q. And does that number
10 correspond to this Iron Mountain shipment
11 statement?

12 A. It corresponds to the
13 barcode number on the statement.

14 Q. Okay. That particular box
15 that ends with 0487 in the picture, is
16 there any way that we're able to identify
17 the contents of that box?

18 A. It says partial JBP. So one
19 can infer that there might be Johnson's
20 Baby Powder in it.

21 Q. But you don't -- as you sit
22 here, you're not able to make that
23 determination other than making the
24 assumption based upon that?

1 A. Not having seen the contents
2 of the box or an exact listing of the
3 contents, I cannot say.

4 Q. Okay. If you would look at
5 the bottom of the first page of
6 Exhibit 18 where it has a box history.

7 A. Mm-hmm.

8 Q. And if you start at the
9 bottom, you'll see it says, "12/12/94
10 received at Iron Mountain"?

11 A. Mm-hmm.

12 Q. Above that it says, "7/26/96
13 checked out."

14 Do you know who Hernando
15 Arbelaez is?

16 A. I do not.

17 Q. Do you know why if at all
18 that particular box may have been checked
19 out by Johnson & Johnson in July of 1996?

20 MS. FOURNIER: Objection.

21 THE WITNESS: We don't know
22 that that represents a checkout by
23 Johnson & Johnson because we don't
24 know if Hernando Arbelaez was a

1 Johnson & Johnson employee or an
2 Iron Mountain employee.

3 BY MR. LAPINSKI:

4 Q. Do you know of any reason
5 why anyone other than a representative of
6 Johnson & Johnson would be able to check
7 a box out from Iron Mountain that was a
8 Johnson & Johnson box?

9 MS. FOURNIER: Objection.

10 THE WITNESS: Well,
11 presumably some of -- some of
12 these could represent internal
13 movement, you know, moving things
14 from one place to another in their
15 storage facility.

16 BY MR. LAPINSKI:

17 Q. Well, that's a presumption
18 that you're making though? You don't
19 know that?

20 A. Well, you'd have to
21 determine who these contact folks were,
22 whether they were Johnson & Johnson
23 people or Iron Mountain people.

24 Q. Okay. Let's go to -- let's

1 jump up on this to September 21st, 2017,
2 which is on the box history the last time
3 the box was checked out.

4 A. Mm-hmm.

5 Q. Do you know who AnneMarie
6 Braman is?

7 A. I do not.

8 Q. Okay. In September of 2017,
9 would offsite samples have been part of
10 your responsibility as the J&J historian?

11 A. No, they would not.

12 Q. Okay. Do you as the J&J
13 historian use Iron Mountain for the
14 storage of any offsite samples?

15 A. No.

16 Q. Okay. Did you speak with
17 anybody in regard to offsite samples and
18 the storage policies for those samples at
19 Iron Mountain?

20 A. I spoke with Sarita Finnie
21 and Barbara Brewer about the marketing
22 samples. Also Mark Zappa and Lorena
23 Telofski. And they had told me that it
24 was not the practice of marketing or

1 quality or R&D to send samples to offsite
2 storage, that it would not be part of
3 their regular practice to do so.

4 Q. But these were samples that
5 were maintained by Iron Mountain on
6 behalf of J&J, correct?

7 A. That's correct.

8 Q. And if I understand your
9 testimony correctly, none of the people
10 that you spoke to had an awareness of how
11 these boxes were maintained at Iron
12 Mountain?

13 A. No. I think it actually
14 came as a surprise to them that there
15 were boxes of samples there.

16 Q. And if you could remind me
17 again. You had stated that as far as the
18 relationship between Johnson & Johnson
19 and Iron Mountain, there was an
20 individual within Johnson & Johnson who
21 would have a better understanding as to
22 the contractual relationship between the
23 two organizations, correct?

24 A. Johnson & Johnson has a

1 worldwide records management group. And
2 that's a large organization, as you might
3 imagine. And so the people in that group
4 would partner with people in different
5 areas of the company. So somebody --
6 folks in that group would have an
7 understanding of the contract -- the
8 contract we have with the service
9 provider.

10 Q. So as you sit here, you have
11 no knowledge of how the boxes were
12 maintained at Iron Mountain?

13 A. I do not.

14 Q. Okay. Do you know whether
15 or not when the boxes were sent to the
16 Iron Mountain facility they were sealed?

17 A. I do not have that
18 information. I can say though these just
19 look like they are banker boxes. It
20 doesn't look like there are seals on
21 them. You can see from the photos.

22 Q. Okay. You don't know where
23 those photographs were taken though?

24 A. I do not.

1 Q. Okay. So you don't know if
2 they were photographs of the boxes at
3 Iron Mountain?

4 A. I don't know.

5 Q. Okay. And do you know who
6 within worldwide records management group
7 might be the best person to speak to in
8 regard to the maintenance of the offsite
9 samples at Iron Mountain?

10 A. I do not. It would be
11 whoever works with the consumer company.

12 Q. Meaning Johnson & Johnson
13 Consumer Incorporated?

14 A. Yeah, there would be
15 somebody that -- who they would partner
16 with in records management if they needed
17 to store things offsite.

18 Q. In the preparation that you
19 did in order to testify as to chain of
20 custody for these offsite samples, do you
21 have any knowledge of these boxes being
22 tampered with while they were at --
23 strike that.

24 Do you have any knowledge of

1 the offsite samples being tampered with
2 while they were in the control of Iron
3 Mountain?

4 A. We -- I do not have any
5 information about how these offsite
6 samples were treated or stored when they
7 were at Iron Mountain.

8 Q. Do you know who Kelly Starr
9 is?

10 A. I do not.

11 Q. Do you know who Samantha
12 Floyd is?

13 A. I do not.

14 Q. Do you have any reason to
15 believe that the offsite samples stored
16 at Iron Mountain would have been tampered
17 with?

18 A. When you say tampered, can
19 you clarify?

20 Q. In any way damaged, opened,
21 accessed at all by Iron Mountain?

22 A. Well, without knowing
23 exactly what these checkouts refer to,
24 are they just internal moves because they

1 need to move things around in their
2 storage facility or do they -- it's hard
3 to say. So I do not have enough
4 information to have an opinion about
5 that.

6 Q. Are you aware of the names
7 of the individuals who would have sent
8 samples to offsite storage?

9 A. Would you -- can I ask what
10 time frame?

11 Q. At any time frame. Are you
12 aware of any individuals who would have
13 said offsite marketing samples to Iron
14 Mountain?

15 A. No. When I talked to Sarita
16 Finnie and certainly Barbara Brewer who
17 has been with the company a long time,
18 they didn't know these samples existed in
19 offsite storage. None of us knew they
20 had been there because they had been
21 there so long. So I do not know of
22 anyone who would have done it, and both
23 of them said that it was not the policy
24 or practice of marketing to send samples

1 to offsite storage.

2 Q. And would the same hold true
3 for quality assurance?

4 A. Yes.

5 Q. And would the same hold true
6 for research and development?

7 A. Yes.

8 Q. Going back to the Iron
9 Mountain records, which is Exhibit 18.
10 It indicates that the customer is
11 Johnson & Johnson Consumer Products,
12 correct?

13 A. That is what it says, yes.

14 Q. Do you have any reason to
15 believe that a non-Johnson & Johnson --
16 any non-Johnson & Johnson personnel would
17 have been able to send sample boxes to
18 Iron Mountain for storage?

19 MS. FOURNIER: Objection.

20 THE WITNESS: Do you mean
21 somebody who's not an employee of
22 either Johnson & Johnson or the
23 consumer company --

24 BY MR. LAPINSKI:

1 Q. Correct.

2 A. -- or just the consumer
3 company?

4 Q. Both.

5 A. No, I don't think so. Not
6 under these parameters, no. I mean, that
7 being said I'm sure there are a lot of
8 companies who use Iron Mountain.

9 (Document marked for
10 identification as Exhibit
11 Gurowitz-19.)

12 BY MR. LAPINSKI:

13 Q. I'm going to hand you a
14 document that's been marked as
15 Exhibit 19. If you would review that
16 document and just let me know when you're
17 finished I'm sorry are you ready.

18 I apologize. I thought I
19 asked you to let me know when you're
20 ready.

21 A. Oh, I'm sorry.

22 Q. No, that's okay.

23 Ms. Gurowitz, I've handed
24 you Exhibit 19. Is this a document that

1 you've ever seen before?

2 A. No.

3 Q. The first page of this
4 document is Bates-stamped
5 JNJTALC00536657. And it is a chain of
6 custody document.

7 Ms. Gurowitz, if you would
8 look in the upper left-hand corner under
9 description, it says JBP Sample 01. I
10 believe that says partial next to it. Do
11 you know what that refers to?

12 A. Not -- I do not know exactly
13 what that refers to.

14 Q. Do you know whether or not
15 it corresponds to sample JP -- JBP-001 on
16 the sample list that we've been
17 discussing?

18 A. Let me take a look. I'm
19 sorry I'm having a hard time to get it
20 with the double-sided it. It continues
21 to throw me off. I think these are
22 slightly out of order somehow.

23 Just to be clear, you're
24 referring to the -- oh, that's 91. I'm

1 sorry.

2 Q. I'm looking at page ID 11865
3 if that helps.

4 A. 11865. Okay. I've got it.
5 The one that's JBP-001?

6 Q. Yes.

7 A. Well, this says JBP Sample
8 01 partial, and this says JBP-001 full.

9 So if this refers to a
10 container that's partially full, it does
11 not match up with this one, because this
12 states that the container is full.

13 Q. Okay. If you look -- and
14 it's a difficult copy looking at
15 Exhibit 19. But going across the
16 different columns, there is a column for
17 packing contents that on this first page
18 is blank. And then if you see the second
19 column it says time and date. Can you
20 make that out? Actually, date and time.
21 Are you able to make that out?

22 A. This one, yes.

23 Q. And then the next one after
24 that says "released by."

1 Do you see that?

2 A. I do.

3 Q. Okay. Do you know what IT
4 lead is?

5 A. I do not. IT usually refers
6 to information technology. But I don't
7 know what it means in this case.

8 Q. How about in the received by
9 section, "entrusted advisors." Do you
10 know who entrusted advisors are?

11 A. I do not.

12 Q. If you go to the third line
13 down, the entry dated February 21st,
14 2018. There is an entry there, it looks
15 like initials. And under that is QA. Do
16 you know who those initials would be?

17 A. Can I ask you to clarify?
18 You are looking for the signature column?

19 Q. Yeah.

20 A. The signature directly
21 above --

22 Q. In the "received by" column
23 there are initials and a signature, and
24 below that it says QA. Okay.

1 A. I do not know. I can't make
2 out the handwriting. It could be an S or
3 an A. I can't really tell from the
4 writing.

5 Q. Okay. If you go to the next
6 page, under description it says JBP
7 Sample Number 01. Do you have any idea
8 what that refers to?

9 A. I do not.

10 Q. If you turn to the next
11 page, which has Bates numbers ending in
12 659. The description is, "JBP sample
13 partial Number 2 done." Do you know what
14 that refers to?

15 A. Not offhand. It's possible
16 that it refers to JBP-002. But I could
17 not say without more information.

18 Q. Okay. What additional
19 information would you need in order to be
20 able to say?

21 A. Well, so, on this -- the
22 chain of custody sheet, it's listed as
23 JBP Sample 02. But the sample numbers on
24 the sheet of all of the samples of two

1 zeros before the other numbers. So they
2 don't exactly correspond.

3 Q. On the following page, JBP
4 Sample 02, do you know what that refers
5 to?

6 A. Without more information I
7 could not say.

8 Q. On the following page, JBP
9 Sample 03 partial, do you know what that
10 refers to?

11 A. Again, without more
12 information, I could not say.

13 Q. Do you know whether any of
14 these are referring to offsite samples
15 that have been produced and included on
16 the sample list?

17 A. Without more information I
18 could not say, again.

19 Q. If you could -- if you could
20 take a minute and just look at the
21 various pages that are included in this
22 document, and in particular the
23 description page of each of these, and
24 tell me whether or not there are any

1 descriptions on there that can correspond
2 to the sample lists that we have been
3 talking about today?

4 A. Again, without more
5 information, I couldn't say because the
6 numbering system is different on the
7 chain of custody list. And the sample
8 list. And the chain of custody list does
9 not provide information, like, for
10 instance, what it says on the label or a
11 date if given. So I don't have enough
12 information to make that determination.

13 Q. You had testified earlier in
14 regard to the PTI Royston samples that
15 you had had a conversation with an
16 individual in regard to those samples,
17 correct?

18 A. That is correct.

19 Q. And who was it that you
20 spoke to in regard to the PTI samples?

21 A. A woman named Janet Stanish
22 at PTI. I took an approximate guess on
23 the spelling on the last name. I can't
24 confirm that it's spelled exactly how I

1 wrote it.

2 Q. And do you know what
3 Ms. Stanish's position is at PTI?

4 A. I do not know what her title
5 is.

6 Q. And what was it that she
7 told you in regard to the samples that
8 were maintained for Johnson & Johnson at
9 PTI?

10 A. She told me that as per
11 their contract, and it's listed in the
12 contracts, that they need to maintain
13 samples as per the contract for either
14 four years from date of manufacture or
15 one year after date of expiration,
16 whichever comes first.

17 She said that the room, the
18 retaining room they kept them in was in
19 fact located at PTI. They were kept in,
20 you know, on shelves in boxes in
21 containers and there was climate control.

22 And then she told me that
23 when the samples were requested, if there
24 was more than one bottle of a product,

1 they were able to send an entire bottle,
2 because as part of their contractual
3 obligation with Johnson & Johnson they
4 need to retain samples.

5 So for instance, if, say,
6 there were two bottles of a particular
7 sample, they were able to keep one bottle
8 as per the contract and send the other.

9 If, however, there was only
10 one bottle, they had to open and divide
11 that sample and send part of that sample.

12 Q. And when you say when the
13 samples were requested, are you referring
14 to the point in time where the samples
15 were requested pursuant to the order that
16 was entered by the court?

17 A. Yes.

18 Q. Are you aware of any time
19 prior to the -- the request being made
20 pursuant to this order that PTI had
21 released samples to anybody?

22 MS. FOURNIER: Objection.

23 Outside the scope.

24 THE WITNESS: I am not,

1 because I was only trying to track
2 chain of custody for the items
3 listed in this list.

4 BY MR. LAPINSKI:

5 Q. To the extent that PTI
6 maintained multiple samples from the same
7 Johnson Baby Powder lot, are you aware of
8 what other samples were sent out for
9 testing?

10 MS. FOURNIER: Objection.
11 Outside the scope.

12 THE WITNESS: I am only
13 aware of the samples that are
14 included as part of this list,
15 because that's what I was
16 researching the chain of custody
17 for.

18 BY MR. LAPINSKI:

19 Q. You had indicated that to
20 the extent that there was only one sample
21 available, and if you look at Page ID
22 11911 as a point of reference.

23 A. I am there.

24 Q. Actually, strike that.

1 Do you have any independent
2 knowledge of the samples that were
3 maintained at PTI Royston on behalf of
4 J&J?

5 A. Other than tracking them for
6 the purposes of establishing chain of
7 custody for what is on this list, no.

8 Q. And you did that only for
9 purposes of this deposition today,
10 correct?

11 A. Correct.

12 Q. Maintaining records on PTI's
13 samples is not part of your job
14 responsibility as a J&J historian,
15 correct?

16 A. No, it is not.

17 Q. Who other than yourself
18 within Johnson & Johnson would have
19 knowledge of the samples that are
20 maintained at PTI?

21 MS. FOURNIER: Objection.
22 Outside the scope.

23 THE WITNESS: I don't know
24 people's names. But it would be

1 whoever that they work with on the
2 Johnson & Johnson side.

3 BY MR. LAPINSKI:

4 Q. And the samples that were
5 maintained by PTI on behalf of Johnson &
6 Johnson were in sealed Johnson & Johnson
7 containers, correct?

8 MS. FOURNIER: Objection.

9 THE WITNESS: The samples
10 were -- they were in packages, in
11 Johnson's Baby Powder packages.
12 So I have not seen photographs of
13 those packages. So I couldn't
14 tell you if they were sealed or
15 not.

16 BY MR. LAPINSKI:

17 Q. Is it your understanding
18 that the samples maintained by PTI on
19 behalf of Johnson & Johnson were in
20 sealed packages?

21 A. That, I do not know. I
22 have -- again, I have not seen
23 photographs of the actual samples, so I
24 do not know.

1 (Document marked for
2 identification as Exhibit
3 Gurowitz-20.)

4 BY MR. LAPINSKI:

5 Q. I'm going to mark this
6 document as Exhibit 20. Ms. Gurowitz,
7 I've handed you a Federal Express
8 shipping -- shipping receipt.

9 The question I have for you
10 is that, in the upper left-hand corner,
11 the shipment is from Kelly Smith at
12 Bureau Veritas. Do you know what Bureau
13 Veritas is?

14 A. I do not know what Bureau
15 Veritas is. It's in Kennesaw, Georgia.
16 When I spoke with Janet Stanish at PTI,
17 she told me initially their samples were
18 sent to a lab in Georgia before it was
19 determined that they would be examined by
20 a lab in New Jersey.

21 So I could -- although I
22 could make a personal educated inference
23 that that might represent the facility in
24 Georgia. But I do not have factual

1 information that I could point to
2 regarding that.

3 (Document marked for
4 identification as Exhibit
5 Gurowitz-21.)

6 BY MR. LAPINSKI:

7 Q. I'm going to hand you a
8 document that's marked as Exhibit 21. If
9 you could review that document and just
10 let me know after you've had an
11 opportunity to review it.

12 A. I have reviewed it.

13 Q. Okay. Do you know what this
14 document is?

15 A. It is laboratory chain of
16 custody form. It says so right at the
17 top.

18 Q. Have you seen this document
19 before?

20 A. I have not.

21 Q. Okay. As indicated, this
22 document is entitled "Laboratory Chain of
23 Custody Form."

24 And it says it's from PTI

1 Royston, LLC, to Maxxam Analytics,
2 M-A-X-X-A-M, Analytics in Kennesaw,
3 Georgia. And it's a relinquish date of
4 9/12/17 of samples.

5 Would you agree with that?

6 A. That is what it says on the
7 paper, yes.

8 Q. And if you would take a
9 minute just to review these samples that
10 are included as part of this list to
11 confirm that the samples on this list
12 include all samples that are part of the
13 PTI inventory that has been produced in
14 this litigation?

15 A. Did you want me to look at
16 each one or just --

17 Q. Actually why don't we do it
18 this way. I'm going to give you another
19 document that's Exhibit 22.

20 (Document marked for
21 identification as Exhibit
22 Gurowitz-22.)

23 BY MR. LAPINSKI:

24 Q. And this is a second

1 laboratory chain of custody form, Bates
2 Number JNJTALC00553768. And it's, like
3 Exhibit 21, it's dated September 12th,
4 2017, from PTI Royston to Maxxam
5 Analytics.

6 Would you agree?

7 A. Yes.

8 Q. As the representative for
9 Johnson & Johnson here to testify on
10 chain of custody, are you aware of PTI
11 sample, included on this sample list
12 being sent from PTI Royston to Maxxam
13 Analytics in September of 2017?

14 A. I am aware that samples were
15 sent from PTI. I did not know the name
16 of the lab in Georgia till now.

17 Q. Is it your understanding
18 that Maxxam Analytics is a lab?

19 A. This is the first time I'm
20 seeing the name. So I -- without looking
21 them up or confirming that, I could not
22 confirm just by looking at the paper.

23 Q. And do you know who Alan
24 Seagrave is?

1 A. I do not.

2 Q. Do you know why the PTI
3 samples would have been sent from PTI
4 Royston in Georgia to Maxxam Analytics in
5 September of 2017?

6 A. Well, presumably it was per
7 a request for this matter. Janet Stanish
8 at PTI did tell me that they were
9 requested to send their samples to a lab
10 in Georgia, and then it was decided that
11 they would in fact be reviewed at a lab
12 in New Jersey.

13 Q. There was -- there was a
14 request to PTI to send the samples to a
15 laboratory in September of 2017?

16 A. She did not tell me exactly
17 what the date of the request was. But
18 she said they were requested to send
19 samples.

20 Q. And do you know who made
21 that request?

22 A. I do not know the specific
23 person who made that request to them.

24 Q. We had talked briefly

1 earlier today in regard to the process
2 that PTI followed when preparing the
3 samples for shipping.

4 Do you recall that?

5 A. Yes.

6 Q. Okay. What is your
7 understanding of how PTI Royston prepared
8 the PTI samples on our sample list for
9 shipping in September of 2017 when they
10 sent them to Maxxam Analytics?

11 A. My understanding from
12 speaking to Janet at PTI was that if more
13 than one sample existed of any given
14 bottle, that they were able to send a
15 full sample because they were still able
16 to send a sample and meet their
17 contractual obligation to Johnson &
18 Johnson to retain a sample.

19 In the case that there was
20 only container of a sample, in order to
21 meet both obligations, they had to divide
22 that sample, and so they did do that.
23 And they put the section they sent to the
24 lab in a sealed cup.

1 Q. And as far as the shipping
2 of the products, all of the samples from
3 PTI to Maxxam Analytics, are you aware of
4 how those samples were packed for
5 shipping?

6 A. She told me they were packed
7 in boxes. In her words, they were
8 palletized, which means they were put on
9 pallets. And they actually drove them
10 from PTI to the lab in Georgia. She said
11 they were FedExed from the Georgia
12 facility to New Jersey.

13 Q. And do you have any
14 information that would lead you to
15 believe that during that process any of
16 the PTI samples were tampered with?

17 A. I do not have information to
18 indicate that. I was trying to trace
19 their chain of custody from PTI through
20 every step till they got to the lab.

21 So I was looking at, you
22 know, who had them, had they packed them,
23 how they got from one place to another.

24 Q. Are you aware of whether or

1 not the samples that were delivered to
2 Maxxam Analytics were unpacked?

3 A. I do not know.

4 Q. Do you know whether or not
5 those samples were opened when they were
6 at Maxxam Analytics?

7 A. I do not know.

8 Q. Do you know whether any of
9 those samples were tested while they were
10 at Maxxam Analytics?

11 A. I do not know.

12 Q. Do you know whether any
13 samples were destroyed while they were at
14 Maxxam Analytics?

15 A. I do not know. I can't
16 imagine they would have destroyed them
17 though.

18 Q. But you have no knowledge?

19 A. I do not.

20 Q. You have no knowledge
21 whether they were tested either?

22 A. No.

23 Q. Do you have any idea what if
24 anything at all was done with the samples

1 when they were at Maxxam Analytics?

2 A. It's my understanding they
3 sent them to Maxxam Analytics. They were
4 there for a period of time. It was then
5 decided that they would be looked at at a
6 lab in New Jersey, and so Maxxam
7 Analytics Federal Expressed them to the
8 facility in New Jersey.

9 Q. Do you know whether there's
10 any relationship between Maxxam Analytics
11 and Bureau Veritas?

12 A. I do not.

13 (Document marked for
14 identification as Exhibit
15 Gurowitz-23.)

16 BY MR. LAPINSKI:

17 Q. We'll mark this as
18 Exhibit 23. If you could just take a
19 look at that document and let me know
20 whether you've seen that document before.

21 A. Unless you showed it to me
22 earlier today, I do not believe I've seen
23 this.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-24.)

3 BY MR. LAPINSKI:

4 Q. Okay. I'm also going to
5 mark Exhibit 24. Have you ever seen
6 Exhibit 24 before?

7 A. I don't believe I have.

8 Q. Exhibits 23 and 24 are
9 laboratory chain of custody forms,
10 correct?

11 A. That is what it says on the
12 documents.

13 Q. And both of the documents
14 show that there is laboratory -- that
15 there is a shipment going from Maxxam
16 Analytics in Kennesaw, Georgia to
17 Jonathan Chun at Alliance Technologies,
18 correct?

19 A. That is what it says on the
20 document, yes.

21 Q. Do you have an understanding
22 of the purpose of this document?

23 A. It's a chain of custody form
24 designed to document, just from looking

1 at the information on it, it would be
2 designed to document this transfer of
3 whatever is listed inside it from one
4 organization to the other.

5 Q. Do you have an understanding
6 that the PTI samples that are contained
7 on our sample list were transferred from
8 Maxxam Analytics to Alliance Technologies
9 in February of 2018?

10 A. That is what it says on the
11 document.

12 Q. And as the representative of
13 the Johnson & Johnson defendants
14 testifying in regard to chain of custody,
15 is that the date that the transfer
16 occurred?

17 A. According to the information
18 written here, yes.

19 Q. Are you aware of what if
20 anything was done with the PTI samples
21 for the five-month period of time that
22 they were at Maxxam Analytics?

23 A. I am not.

24 Q. Did you make any attempt

1 to -- in preparation for today's
2 deposition to determine what if anything
3 was done with those samples during that
4 five-month period of time?

5 A. I did not. When I spoke
6 with Janet, she said they -- they put
7 them on pallets, they drove them by truck
8 over to the lab in Georgia, and then it
9 was decided that they needed to be looked
10 at at a lab in New Jersey. And so they
11 were then FedExed.

12 But from the way she told it
13 to me, it didn't seem -- it sounded like
14 it was a much shorter time frame. So I
15 did not pursue that further, because it
16 seemed like it was a very sort of short
17 time frame where one thing followed from
18 the next.

19 MR. LAPINSKI: Why don't we
20 go off the record take a
21 five-minute break.

22 THE VIDEOGRAPHER: The time
23 is 3:08 p.m. We are off the
24 record.

1 (Short break.)

2 THE VIDEOGRAPHER: We are
3 back on the record at 3:27 p.m.

4 BY MR. LAPINSKI:

5 Q. Ms. Gurowitz, I'm going to
6 hand you a document that's been marked as
7 Exhibit 25.

8 (Document marked for
9 identification as Exhibit
10 Gurowitz-25.)

11 BY MR. LAPINSKI:

12 Q. There are several
13 photographs that were produced of a Baby
14 Powder container. If you could just take
15 a minute and review those and let me know
16 whether or not you've seen those
17 photographs before?

18 A. I have seen the photograph
19 of the front, but not the back and sides.

20 Q. Okay. What is your
21 understanding of what that is a
22 photograph of?

23 A. This is a photograph of a
24 Johnson's Baby Powder tin that was

1 manufactured and marketed in England. It
2 was one of a small handful of samples
3 provided by a Johnson & Johnson retiree
4 named John Hopkins.

5 Q. So would this be one of the
6 Hopkins samples that we've referred to
7 previously?

8 A. Yes.

9 Q. And are you able to identify
10 which of the samples on the sample list
11 these photos relate to?

12 A. Yes. If you give me a
13 moment to find that on the list.

14 Q. Sure.

15 A. Absolutely. I still can't
16 get used to the double-sided.

17 Q. Are these going to be on the
18 museum list or on the offsite sample
19 list? These are going to be on the
20 offsite sample list, correct?

21 A. Correct.

22 Q. Okay. It's going to be the
23 last two pages of the offsite sample
24 list. Page ID 1189 and 1190, if that

1 helps.

2 MS. FOURNIER: You can go
3 ahead.

4 THE WITNESS: Okay. This
5 looks like it would be the sample
6 that is referred to as UK Facility
7 2, because it is a metal container
8 from the early 1950s. The
9 photograph of the bottom has a
10 label that says early 1950s.

11 (Document marked for
12 identification as Exhibit
13 Gurowitz-26.)

14 BY MR. LAPINSKI:

15 Q. I'm going to hand you
16 Exhibit 26. I'll ask you to take a look
17 at those photos. And similarly we're
18 going to look to identify if that is one
19 of the Hopkins samples which one it is.

20 A. Judging by the photograph at
21 the bottom with the label it says late
22 1950s. This looks like it would be the
23 sample labeled UK Facility 3.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-27.)

3 BY MR. LAPINSKI:

4 Q. This is Exhibit 27. Take a
5 look at that and let me know if you've
6 ever seen those photographs before.

7 A. I have seen a photograph of
8 just the front of this container, not the
9 sides or top or bottom.

10 Q. And is it your understanding
11 that this is photographs of the -- one of
12 the Hopkins products as well?

13 A. It is labeled October '66
14 and UK Facility 4, sample number is
15 identified as saying October 1966 on the
16 container, so that would -- that would
17 correspond.

18 Q. If you would do me a favor.
19 If you could please turn to -- if you
20 look on the bottom right-hand corner with
21 the Bates number. The Bates number that
22 ends in 6825. And if you can describe
23 that picture for me, I would appreciate
24 it.

1 A. It is the picture of a top
2 of a container with the labeling separate
3 by the side. I have not seen this
4 artifact in person. So that's what I can
5 make out from the photograph.

6 Q. Are you familiar at any time
7 of Johnson & Johnson having a promotion
8 for a free trip to Disneyland that would
9 be able to be slid off of a Baby Powder
10 bottle?

11 A. I am not. But Johnson &
12 Johnson throughout a good portion of its
13 history was highly decentralized. That
14 would be something that was conducted in
15 the United Kingdom where this sample was
16 from. We don't have a representative --
17 a good representation of a wide variety
18 of artifacts, product artifacts from the
19 UK in the corporate archives collection.

20 So before these matters,
21 this is the first time I had seen this
22 particular packaging. So being
23 decentralized in this time, October of
24 1966, the UK would have done -- it

1 wouldn't have been a central thing that
2 was done necessarily in the States or all
3 over the world. The UK would have sort
4 of run its own promotions.

5 (Document marked for
6 identification as Exhibit
7 Gurowitz-28.)

8 BY MR. LAPINSKI:

9 Q. This is Exhibit 28. And if
10 you could just look at those pictures.
11 Let me know if you've ever seen those
12 pictures before.

13 A. I have seen the picture of
14 the front, so the first one on this.

15 Q. And what is your
16 understanding that that's a picture of?

17 A. This is a picture that it's
18 labeled on the bottom late 1940. It
19 would correspond to Sample Number UK
20 Facility 1.

21 (Document marked for
22 identification as Exhibit
23 Gurowitz-29.)

24 BY MR. LAPINSKI:

1 Q. I'm going to hand you a
2 document that's been marked as
3 Exhibit 29. Ms. Gurowitz, have you ever
4 seen that photograph before?

5 A. I believe so. There were
6 two that I looked at that had the
7 "Property of PPC Museum" on them. If you
8 look at the second in the set.

9 Q. And what is your
10 understanding of what the "Property of
11 PPC Museum" refers to?

12 A. So we don't have any records
13 relating to a museum, as we understand a
14 museum to be at Personal Products.
15 Personal Products is a historical
16 operating unit of Johnson & Johnson that
17 no longer exists.

18 At one point in time it
19 marketed Shower to Shower among other
20 products. It was located in Milltown,
21 New Jersey in a building that likely no
22 longer exists now either.

23 At some point in time, this
24 artifact belonged to or was labeled

1 property of whatever that was. And so we
2 don't know. It probably was not a museum
3 in the way that we think of museums or
4 the way the current Johnson & Johnson
5 museum power house is. It may have been
6 as simple as a case, the museum,
7 quote-unquote, in the UK that those four
8 UK samples were taken from, was a
9 glass-fronted case. So it may have been
10 something like that.

11 Q. And I'm sorry. You said --
12 what does PPC stand for?

13 A. PPC is an acronym for
14 Personal Products Corporation. It is a
15 no longer existing historical operating
16 unit of Johnson & Johnson.

17 Q. So it is a -- it was a
18 Johnson & Johnson entity?

19 A. At one point, yes.

20 Q. Okay. And if you look at
21 the label on the bottom. It says,
22 "Property of PPC museum, Milltown, New
23 Jersey." And it says, "Must be returned
24 to consumer affairs."

1 Do you know what that refers
2 to?

3 A. Presumably consumer affairs
4 was in charge of whatever the PPC museum
5 was.

6 Q. And would that be Johnson &
7 Johnson consumer affairs? Is that your
8 understanding?

9 A. Or PPC consumer affairs.

10 Q. But consumer -- consumer
11 affairs of a J&J entity?

12 A. Yes.

13 Q. At the top of that photo
14 there's a reference to Doyle/B&PD. Do
15 you know what that refers to?

16 A. I do not know what
17 Doyle/B&PD refers to.

18 Q. Okay. And you had said
19 earlier that you assumed this was housed
20 at PPC?

21 A. At one time. It has --
22 elsewhere on that upper label, it says
23 MDSE notice which stands for
24 merchandising notice. This may have been

1 something related to that policy that was
2 in place for a few decades that whenever
3 you change the packaging shape or the
4 label style, send a sample. That would
5 correspond to merchandising notices.

6 So this may reflect that
7 this was one of those. And it is from
8 1968. So it would fall inside those
9 parameters. So it is possible that this
10 was one of those items that resulted
11 in -- they did something, they changed
12 the label, changed the colors on the
13 label or something like that.

14 And then one point in time,
15 we don't know when, it belonged to
16 whatever the PPC museum in Milltown was.

17 Q. If you look at the first
18 page of the document, and it's indicated
19 that this is STS033.

20 Do you see that?

21 A. I do.

22 Q. And is it your understanding
23 that this is a photograph of the offsite
24 storage sample STS033?

1 A. Yes. The year corresponds.
2 I'm looking at that right now. It's on
3 Page 41 of 91 of the big list. And that
4 says it's -- STS033 is 1968. That
5 corresponds with the date on the label on
6 the back. So there we can make a
7 correlation.

8 Q. And is that an authentic
9 Shower to Shower container?

10 A. It looks to be from the
11 photograph.

12 Q. And is there any reason to
13 believe that that cap was removed from
14 the container at any time?

15 MS. FOURNIER: Objection.

16 THE WITNESS: I have no
17 information on that products back
18 then they didn't have seals.
19 Safety seems did not become a
20 thing until 1980s. No consumer
21 products really had them. So I
22 don't -- it certainly wasn't
23 sealed.

24 I don't have any information

1 about whether the cap was removed
2 or opened.

3 BY MR. LAPINSKI:

4 Q. Based upon your review of
5 the photograph, is there any evidence in
6 the photograph that the cap was removed
7 at any time?

8 MS. FOURNIER: Objection.

9 THE WITNESS: I cannot tell
10 from the photograph. I couldn't
11 tell -- I don't even know if you
12 could tell by looking at the
13 artifact. I can't see what the
14 top of it looks like. So I cannot
15 tell from just the photographs
16 here.

17 BY MR. LAPINSKI:

18 Q. Were you responsible -- were
19 you responsible for preparing this sample
20 for production?

21 A. No. This was from offsite
22 storage. So this was pulled in from
23 offsite storage.

24 Q. The samples that were pulled

1 in from offsite storage who was
2 responsible for preparing them for
3 production?

4 A. So when you say preparing
5 for production, do you mean doing all
6 this, labeling?

7 Q. Yes.

8 A. So they were -- they were
9 identified. I mean, they had -- as I
10 mentioned earlier, they had been there so
11 long that until the search commenced for
12 samples that might be located in offsite
13 storage or other places that nobody even
14 realized that these were there. And so
15 they were pulled in.

16 So this would have been --
17 they would have been requested by
18 somebody at the consumer company records
19 management. And this particular -- these
20 numbers, the STS033, the sample numbers
21 were signed by the legal folks. So this
22 would have been photographed by somebody
23 on the legal team.

24 Q. Do you know who at Johnson &

1 Johnson Consumer was responsible for
2 bringing the samples back from offsite
3 storage?

4 A. I do not know.

5 Q. Do you know who at Johnson &
6 Johnson Consumer was responsible for
7 taking the samples from the offsite
8 storage boxes and preparing them for
9 shipment to innovative technologies?

10 A. No, I do not know that.

11 Q. Do you know the process that
12 was used in order to transfer any of the
13 offsite samples from the offsite storage
14 facility to the lab in Eatontown?

15 A. I do not know that process.
16 When I was looking at tracing the chain
17 of custody, I was looking at tracing the
18 chain of custody from the other end,
19 not -- you know, not once they were
20 identified and pulled and sent to the
21 lab. I was looking at tracing the
22 historical chain of custody as to how
23 they got to offsite storage, where they
24 might have been before they got to

1 offsite storage. That's the side I was
2 looking at.

3 Q. Okay. And would that --
4 would that statement pertain to all of
5 the offsite storage samples that we've
6 talked about, other than the Ashton
7 samples, the Hopkins samples and the
8 sample that was left at your museum
9 security?

10 A. Yes.

11 MS. FOURNIER: Objection.

12 THE WITNESS: Sorry.

13 Yes, because that's the part
14 of the chain of custody that we
15 didn't have.

16 (Document marked for
17 identification as Exhibit
18 Gurowitz-30.)

19 BY MR. LAPINSKI:

20 Q. I'm going to hand you a
21 document that's been marked as
22 Exhibit 30. I apologize. That was not
23 stapled.

24 MS. FOURNIER: Can we go off

1 the record for a second?

2 THE VIDEOGRAPHER: The time
3 is 3:44 p.m. We are off the
4 record.

5 (Brief pause.)

6 THE VIDEOGRAPHER: We are
7 back on the record at 3:45 p.m.

8 BY MR. LAPINSKI:

9 Q. Excuse me, Ms. Gurowitz.
10 I've handed you what's been marked as
11 Exhibit 30. Have you seen that
12 photograph before?

13 A. I may have. I have looked
14 at a lot of them.

15 Q. And the first page of that
16 photograph has a Post-It note
17 representing that is sample STS036.
18 Based upon your review of the photograph,
19 does that comport with the sample list?

20 A. Based upon my review of the
21 photograph, it does comport with the
22 sample list. They're both noted from
23 being from 1975. And the product name,
24 the label name is the same, is

1 consistent.

2 Q. In your role as historian,
3 have you personally seen any of these
4 offsite samples?

5 A. No, I have not.

6 (Document marked for
7 identification as Exhibit
8 Gurowitz-31.)

9 BY MR. LAPINSKI:

10 Q. I'm going to hand you a
11 document that has been marked as
12 Exhibit 31. Ms. Gurowitz, can you tell
13 me what that's a photograph of?

14 A. It's a photograph of a
15 Shower to Shower product artifact labeled
16 STS042. It's labeled as being from 1969.
17 That corresponds to the listing on the --
18 of the same number on the offsite, the
19 things from offsite storage.

20 Q. And based upon your review
21 of this picture, does this -- does this
22 look like it's an authentic Shower to
23 Shower container?

24 A. As far as I can tell from

1 the picture, it does.

2 (Document marked for
3 identification as Exhibit
4 Gurowitz-32.)

5 BY MR. LAPINSKI:

6 Q. I'll hand you a document
7 that's been marked as Exhibit 32.

8 MR. LAPINSKI: I'm going to
9 go off the record for a second.

10 THE VIDEOGRAPHER: The time
11 is 3:48 p.m. We're off the
12 record.

13 (Brief pause.)

14 THE VIDEOGRAPHER: Back on
15 the record at 3:49 p.m.

16 BY MR. LAPINSKI:

17 Q. Ms. Gurowitz, I just handed
18 you what exhibit number?

19 A. 32.

20 Q. That's STS043?

21 A. Yes.

22 Q. Very good. Ms. Gurowitz
23 I've handed you a document that's been
24 marked Exhibit 32. Have you seen this

1 photograph before?

2 A. It's possible. I've seen a
3 lot of the -- the Shower to Shower
4 packaging was more consistent over the
5 years historically, so they all look much
6 more similar than the Johnson's Baby
7 Powder.

8 Q. And this photo -- this
9 photograph is labeled STS043, correct?

10 A. That is correct.

11 Q. And does that photograph
12 correspond with the sample entry that's
13 listed in the sample list?

14 A. It does.

15 Q. And based upon your review
16 of the photograph, is that an authentic
17 Shower to Shower bottle?

18 A. As far as I can tell from
19 the photograph.

20 Q. And do you think that the
21 photograph is an accurate depiction of
22 that particular bottle?

23 MS. FOURNIER: Objection.

24 THE WITNESS: I'm not sure

1 exactly what you mean by that, but
2 as far as I can tell.

3 BY MR. LAPINSKI:

4 Q. The photograph itself, it
5 doesn't look like the photograph has been
6 doctored in any way?

7 A. Not that I can tell.

8 (Document marked for
9 identification as Exhibit
10 Gurowitz-33.)

11 BY MR. LAPINSKI:

12 Q. I'm going to hand you a
13 document that's been marked as
14 Exhibit 33. Ms. Gurowitz, this document
15 has a Post-It note on it indicating
16 sample STS046.

17 Do you see that?

18 A. I do.

19 Q. And your review of the
20 picture, does this photograph correspond
21 to the STS046 listed on the sample list?

22 A. Based on the information on
23 both, it appears to correspond.

24 Q. And does the photograph look

1 like it is an authentic Shower to Shower
2 bottle?

3 A. As far as I can tell from
4 the photograph, yes.

5 Q. And is there anything from
6 that photograph that would lead you to
7 believe that is not an accurate picture?

8 A. Not that I could see from
9 the photograph.

10 (Document marked for
11 identification as Exhibit
12 Gurowitz-34.)

13 BY MR. LAPINSKI:

14 Q. I'm going to hand you a
15 document that has been marked as
16 Exhibit 34. Ms. Gurowitz, this document
17 has a Post-It on it indicating sample
18 STS051.

19 Do you see that?

20 A. I do.

21 Q. And your review of the
22 picture, does this photograph correspond
23 to STS051 that is listed on the sample
24 list?

1 A. Based on the information on
2 the photograph, on the sample list it
3 appears to correspond.

4 Q. And based upon your review
5 of the photograph, does this appear to be
6 an authentic Shower to Shower bottle?

7 MS. FOURNIER: I'm just
8 going to -- so I don't have to
9 keep doing it. Object to that
10 question and the one you do after
11 about, does the picture look
12 tampered with. And I do that for
13 all the pictures.

14 MR. LAPINSKI: I changed the
15 tampered with one, so you'll have
16 to.

17 BY MR. LAPINSKI:

18 Q. Is -- okay, based upon your
19 review of the photograph, does this
20 appear to be an authentic Shower to
21 Shower bottle?

22 A. As far as I can tell it
23 appears to be.

24 Q. Is there anything about the

1 photograph that would make you question
2 whether it's an authentic Shower to
3 Shower bottle?

4 A. Not that I can tell from the
5 photograph.

6 Q. And is there anything about
7 the photograph that would lead you to
8 believe that the photograph is not
9 accurate?

10 A. Not that I can tell from
11 this. It's a black-and-white. So as far
12 as I can tell from the photograph.

13 (Document marked for
14 identification as Exhibit
15 Gurowitz-35.)

16 BY MR. LAPINSKI:

17 Q. I'm going to hand you a
18 document that's been marked as
19 Exhibit 35. Ms. Gurowitz, this is a
20 photograph with a Post-It note indicating
21 Sample Number STS053.

22 In your review of the
23 photograph, does this photograph
24 correspond with the sample on the sample

1 list STS053?

2 A. Based on the information in
3 the photograph and on the sample list, it
4 appears to correspond.

5 Q. Is there anything about the
6 photograph that would lead you to believe
7 that this is not an authentic Shower to
8 Shower bottle?

9 A. Not that I can tell from a
10 black-and-white photograph of a color
11 bottle, no.

12 Q. And is there anything in the
13 photograph that would lead you to believe
14 that it is not an accurate picture of the
15 bottle?

16 A. Not that I could tell from
17 the photograph.

18 (Document marked for
19 identification as Exhibit
20 Gurowitz-36.)

21 BY MR. LAPINSKI:

22 Q. I'll hand you Exhibit 36.
23 This is a photograph with a Post-It note
24 indicating STS055. Based upon your

1 review of the photograph does this
2 photograph correspond with STS055 that is
3 listed in the offsite storage list?

4 A. Based on what I can see from
5 the photograph, it appears to correspond.

6 Q. Okay. And this particular
7 photograph indicates that it is -- it
8 says "museum" on it.

9 Do you see that?

10 A. No, I don't.

11 Q. On the -- on the front?

12 A. Oh.

13 Q. There's some type of sticker
14 that's on the product itself.

15 A. Yes, I see that.

16 Q. Do you have any
17 understanding as to why that would say
18 museum on it?

19 A. I do not know. It was in
20 offsite storage. So it is possible it is
21 one of those artifacts from the old
22 museum that was sent back to the
23 operating company.

24 Q. And then below that it says

1 19 --

2 A. Although it's after. I'm
3 sorry. It's after the time period.

4 Q. So then you don't have an
5 understanding as to why museum would be
6 written on there as you sit here?

7 A. I don't. So it's -- as the
8 memo we discussed from 1982 referenced
9 the closing of the museum. This is from
10 the year after. So they would have
11 stopped sending samples to that museum
12 entity. So I don't have any information
13 as to why that would say museum.

14 Q. And it also says underneath
15 that, "1983 sealed container," "tamper,"
16 and something is scribbled out.

17 Do you see that?

18 A. I do see that.

19 Q. Do you have an understanding
20 of what that stands for?

21 A. 1938 was about the time
22 consumer products decided to have
23 tamper-evident seals on them. So that
24 was a new thing in society at that time.

1 And that's -- that may be why that was
2 noted.

3 Q. Based upon your review of
4 the picture, do you believe that that's
5 an authentic Shower to Shower bottle?

6 A. As far as I can tell from a
7 black-and-white photograph of a color
8 artifact, yeah.

9 Q. And is there anything that
10 would lead you to believe that it is not
11 an accurate photo?

12 A. Not that I can tell from the
13 photograph.

14 (Document marked for
15 identification as Exhibit
16 Gurowitz-37.)

17 BY MR. LAPINSKI:

18 Q. I'm going to hand you a
19 document that has been marked as Exhibit
20 37. This photograph is labeled STS062.
21 Based upon your review of the photograph,
22 does it correspond with STS062 in the
23 sample list?

24 A. It appears to correspond.

1 Q. Based upon your review of
2 the photograph, do you believe that
3 that's an authentic Shower to Shower
4 bottle?

5 A. As far as I can tell, again,
6 from a black-and-white photograph of a
7 color artifact, yes.

8 Q. And is there anything about
9 that picture that would lead you to
10 believe that it is not an accurate
11 picture?

12 A. Not that I could tell from
13 the picture.

14 (Document marked for
15 identification as Exhibit
16 Gurowitz-38.)

17 BY MR. LAPINSKI:

18 Q. I'm going to hand you
19 Exhibit 38, which is a photograph that
20 looks like it was taken going about
21 60 miles an hour past the Shower to
22 Shower bottle.

23 If you could look at the
24 second page of that, which is, has a

1 Post-It note STS065. And based upon the
2 three photographs that are here, do you
3 believe that this photograph would
4 correspond to the sample that's listed in
5 the sample list as STX -- STS065?

6 A. There is less evidence
7 because the first one is so blurry. So I
8 can't read the number of ounces in the
9 package. That's one of the things that
10 I've been basing it on. And I can't read
11 the number in the first one. But based
12 on the Post-Its on the other two pages,
13 it would appear to correspond as best I
14 can tell without really being able to see
15 the bottles clearly.

16 (Document marked for
17 identification as Exhibit
18 Gurowitz-39.)

19 BY MR. LAPINSKI:

20 Q. I'm going to hand you a
21 document that's been marked as
22 Exhibit 39. And this is a photograph
23 with a Post-It note that indicates
24 JBP-001 and based upon your review of

1 these photographs, does this photograph
2 correspond with the sample list
3 production JP-001?

4 A. As far as I can tell it
5 appears to correspond.

6 Q. Is there anything in that
7 photograph that would lead you to believe
8 that the photograph of JP-001 is not an
9 authentic bottle?

10 A. Not -- again, not that I
11 could tell from a black-and-white
12 photograph of a color artifact.

13 Q. Anything to lead you to
14 believe that that picture is not
15 accurate?

16 A. Not that I could tell from
17 the photograph, the black-and-white
18 photograph.

19 MS. FOURNIER: I'll have the
20 same series of objections about
21 authentic bottle and inaccurate
22 photograph, et cetera, for the
23 Johnson's Baby Powder series.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-40.)

3 BY MR. LAPINSKI:

4 Q. What did I mark that one as?

5 A. 40.

6 Q. 40?

7 A. 40.

8 Q. Okay. I've handed you a
9 document that has been marked as
10 Exhibit 40. And that indicates with a
11 Post-It note it's a picture of JBP-006.
12 Based upon your review of the photograph
13 does that correspond with JP-006 in the
14 sample list?

15 A. Based upon the information
16 given, it appears to correspond.

17 Q. Based upon your review of
18 the photograph, is there anything that
19 would lead you to believe that is not an
20 authentic J&J bottle?

21 A. Not that I can tell, again,
22 from a black-and-white photograph of a
23 color artifact, it really helps you to
24 see it in color because you know if the

1 branding is a certain color and if for
2 some reason that's not captured in a
3 photograph and the branding was some
4 color that never appeared on a bottle,
5 you could question it. But based on -- I
6 can't tell from the black and white.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-41.)

10 BY MR. LAPINSKI:

11 Q. I'm going to hand you a
12 document that has been marked as
13 Exhibit 41. And these are photographs
14 that are marked as JBP-085. Based upon
15 your review, do the photographs
16 correspond with the sample list JBP-085?

17 A. I -- based on my review it
18 appears to correspond.

19 Q. Does that appear to be a
20 picture of an authentic Johnson's Baby
21 Powder bottle?

22 A. Again, you can't really tell
23 from the black-and-white photograph of a
24 color artifact. It appears to be, but I

1 would really have to see it in color to
2 make an absolute determination.

3 Q. Is there anything that would
4 lead you to believe that is not an
5 accurate picture?

6 A. Not from this, no. But
7 again it helps to see it in color.

8 (Document marked for
9 identification as Exhibit
10 Gurowitz-42.)

11 BY MR. LAPINSKI:

12 Q. I'm going to hand you
13 Exhibit 42. Exhibit 42 is photographs of
14 JBP 087. Based upon your review of
15 Exhibit 42, does it appear to be -- does
16 it appear to correspond with the sample
17 list JBP-087 entry?

18 A. It appears to correspond.

19 Q. Anything that would lead you
20 to believe that it's not an authentic
21 Johnson's Baby Powder bottle?

22 A. Not that I could tell from a
23 black-and-white photograph of a color
24 artifact.

1 Q. And would it -- is there
2 anything that would lead you to believe
3 that it's not an accurate picture?

4 A. Not that I could tell from
5 this photograph.

6 (Document marked for
7 identification as Exhibit
8 Gurowitz-43.)

9 BY MR. LAPINSKI:

10 Q. Let me hand you a document
11 that has been marked as Exhibit 43. And
12 the Post-It note here indicates that this
13 is photographs of sample JBP-096. Based
14 upon your review of the photograph do the
15 photographs correspond with the sample
16 listing JBP-096?

17 A. They -- it appears to
18 correspond.

19 Q. And does that appear to be
20 an accurate depiction -- I'm sorry.
21 Strike that.

22 Does that appear to be an
23 authentic J&J bottle?

24 A. As best I can tell from a

1 black and white photograph of a color
2 artifact, it does. But I'd really have
3 to see it in color.

4 Q. Is there anything that would
5 lead you to believe that it is not an
6 accurate picture?

7 A. Well, if you showed me
8 something in color and for some reasons
9 the Johnson's was in orange, I would say
10 I know for a fact that that has never
11 been part of the branding, so I would
12 question it. That's why I've been saying
13 it's hard to say from a black and white.

14 Q. But there's nothing there
15 that leads you to believe that it is
16 inaccurate?

17 A. Not that I could tell from a
18 black-and-white photograph of a color
19 artifact.

20 Document marked for
21 identification as Exhibit
22 Gurowitz-44.)

23 BY MR. LAPINSKI:

24 Q. Exhibit 44. This is --

1 Post-It note indicating this is a
2 photograph of JBP 097. Based upon your
3 review of the photographs, does this
4 correspond with the sample list and the
5 entry for JBP-097?

6 A. Yes, it appears to
7 correspond.

8 Q. Is there anything about the
9 photograph that would lead you to believe
10 that it's not an authentic J&J bottle?

11 A. Again, I cannot tell
12 100 percent from a black and white
13 photograph of a color artifact. But
14 there is nothing that appears in the
15 black and white, but I'd really have to
16 see a color photograph.

17 Q. If you would turn to the
18 fourth page of the photographs of
19 JBP-097. And there is a sticker on there
20 that indicates that it's a Merchandise
21 Notice 6963.

22 Do you see that?

23 A. I do.

24 Q. And what does that refer to?

1 A. So that would refer back to
2 that policy that was in effect from about
3 the '50s to the '70s, that whenever there
4 was a change made to the packaging, or
5 the labeling, that they were to send a
6 sample.

7 And in fact it says on that
8 label, "Delete 'family size' from front
9 label." So that would have been a change
10 to the label that would have caused them
11 to send a sample.

12 Q. So, these pictures depict a
13 sample that was sent to offsite storage
14 by a Johnson & Johnson entity?

15 A. They do. This is among the
16 marketing samples that were found in
17 offsite storage. So at some point they
18 were sent to offsite storage.

19 (Document marked for
20 identification as Exhibit
21 Gurowitz-45.)

22 BY MR. LAPINSKI:

23 Q. I'll hand you a document
24 that's been marked as Exhibit 45.

1 Post-It note indicates this is sample
2 JBP-099. Based upon your review, do
3 these photographs comport with the sample
4 list entry for JBP-099?

5 A. Based on my review it
6 appears to correspond.

7 Q. On the fourth page, there is
8 a photograph and it has a label on the
9 bottle itself. Do you have -- can you
10 give me an indication of what that label
11 refers to?

12 A. Sure. Again the top says --
13 I'm assuming MD -- the part is cut-off.
14 It goes around the bottle. That would
15 correspond to a merchandising notice. So
16 something about the package was changed,
17 whether it was the label or the size or
18 the shape. And therefore, they -- as per
19 that policy that was in effect for a few
20 decades, they would have sent a sample.

21 Q. So this is a sample that
22 would have been -- would have been sent
23 by J&J Consumer to the museum?

24 A. To the old J&J museum.

1 Q. And then eventually moved to
2 offsite storage?

3 A. Yes. At some point.

4 (Document marked for
5 identification as Exhibit
6 Gurowitz-46.)

7 BY MR. LAPINSKI:

8 Q. I'm going to hand you
9 Exhibit 46. Post-It note indicates that
10 Exhibit 46, pictures of sample JBP 107.
11 Based upon your review of the
12 photographs, does this comport with the
13 listing on the sample list for JBP 107?

14 A. It sort of appears to. But
15 the sample -- the JBP 107 on the sample
16 list has a date of 1973. But the actual
17 photograph of the artifact has three
18 dates. 1973, 1974, and one where I can't
19 see because the date is cut off. 1975.

20 So on this one I couldn't
21 say exactly, because the dates are so
22 different. The one on the sample list
23 does not list three dates. It only lists
24 one date.

1 Q. And the dates that you're
2 referring to are on the third page of the
3 photographs?

4 A. Correct.

5 Q. Okay. And --

6 A. The second and third.

7 Q. Or the third and fourth?

8 A. Or the -- that too.

9 Q. The -- and those dates that
10 you're referring to, what do those labels
11 for those particular dates refer to?

12 A. So, again, it has that
13 merchandise notice number up top. So
14 there would have been some sort of change
15 to either the label or the package shape
16 or size. And if you look at Page three,
17 the bottom label says something -- I
18 can't make on you the first word.
19 Something spaced lettering. So that
20 looks like that would have been a label
21 change.

22 Q. And this is a bottle that
23 would have been produced to the J&J
24 museum pursuant to the policies that were

1 in place at that time?

2 A. At the old museum, yes. It
3 would have been -- it falls in that time
4 frame.

5 (Document marked for
6 identification as Exhibit
7 Gurowitz-47.)

8 BY MR. LAPINSKI:

9 Q. Exhibit 47. Do the
10 photographs in Image 47 correspond to
11 sample JBP-119 on the sample list?

12 A. Yes, it appears to
13 correspond.

14 Q. And on the fourth page,
15 there's a label on the packaging on the
16 fourth page. What's your understanding
17 of that labeling?

18 A. It says -- are you referring
19 to the one that says, "New good sheet,
20 Number 5928?"

21 Q. Yes.

22 A. That again, would have been
23 in relation to a packaging change and as
24 noted, if you look -- it says new

1 plastic, it's from 1963. That is the
2 first year that the product was in a
3 plastic container as opposed a metal
4 container. So that would have been most
5 likely a packaging change.

6 Q. And this would have been a
7 sample that would have been sent to the
8 museum pursuant to the written policy
9 that was in place at that time?

10 A. As best I can tell from
11 this, yes.

12 (Document marked for
13 identification as Exhibit
14 Gurowitz-48.)

15 BY MR. LAPINSKI:

16 Q. I'm going to hand you what's
17 been marked as Exhibit 48. And these
18 photographs correspond to the entries on
19 the sample list for JBP-133?

20 A. Perhaps. The reason I say
21 perhaps is there is a label. And I can't
22 tell. On Page 3 and 4, the label goes
23 over two sides of the container, so it's
24 hard to say.

1 On Page 3 it says Leahy "box
2 number." And then on Page 4, there's a
3 61. So I don't know if it refers to Box
4 Number 61 or the year 1961.

5 If it refers to a year, then
6 they don't correspond because on the list
7 JBP-133 is listed as being from 1960.

8 (Document marked for
9 identification as Exhibit
10 Gurowitz-49.)

11 BY MR. LAPINSKI:

12 Q. I'll hand you Exhibit 49.
13 These are photographs of JBP-135. Based
14 upon your review of the photographs do
15 these images correspond with the product
16 that's listed as JBP-135 on the sample
17 list?

18 A. I can't tell. There is a
19 handwritten label taped onto it that has
20 a date of 1963. But if you look at Page
21 2, the photo on Page 2, it looks like it
22 says -- there's a label toward the
23 bottom. It says, "Filed 11/8/54."

24 Q. And below that writing it

1 says, "Reg number 74,097." Do you have
2 any idea what that indicates?

3 A. I can take an educated guess
4 that it relates to the big label,
5 handwritten label that's taped that says
6 "Trademark application." Potentially
7 that could be a registration number from
8 that. But without more information I
9 couldn't say 100 percent sure.

10 Q. Is it possible that that
11 represents a trademark application that
12 was filed in November of 1954?

13 A. It's possible. But it's got
14 two dates. 1963 and 1964. So that to me
15 would raise an issue right there.

16 Q. And I'm sorry. Where are
17 the two dates that you're referring to?

18 A. So there's a bigger
19 handwritten label that says -- on Page 3
20 it says, "U.S. trade sample." And then
21 on Page 4 it says, "Trademark
22 application." That's got the one -- it's
23 got a date, the month is obscured. It
24 might be a one. It may not. Something,

1 17/63.

2 And then on Page 2, it says,
3 "Filed 11/8/54."

4 (Document marked for
5 identification as Exhibit
6 Gurowitz-50.)

7 BY MR. LAPINSKI:

8 Q. I'm handing you a document
9 that has been marked Exhibit 50. And
10 these are photographs relating to sample
11 JBP 165.

12 Based upon your review of
13 the photographs, do the photographs
14 correspond with the sample list entry JBP
15 165?

16 A. As far as I can determine
17 from the information on the photograph
18 and on the list, it appears to
19 correspond.

20 Q. And on Page 3 of the
21 photographs, there are change labels that
22 are depicted here, correct?

23 A. That is correct.

24 Q. And there are three

1 different change labels. One is Number
2 6715, the other is 7231, and the last one
3 is 7344, correct?

4 A. That is correct.

5 Q. And are they change labels
6 that would represent changes to the
7 labeling of the bottle?

8 A. Changes to something on the
9 bottle. Either the labeling -- something
10 to do with the labeling or the shape or
11 size of the package.

12 Q. And would these samples have
13 been produced to the J&J museum based
14 upon the written protocol that was in
15 place at the time?

16 A. They fall in that time
17 frame. So presumably they would have.

18 (Document marked for
19 identification as Exhibit
20 Gurowitz-51.)

21 BY MR. LAPINSKI:

22 Q. I'm going to hand to you a
23 document that has been marked Exhibit 51.

24 And these relate to JBP-166.

1 Based upon your review of the
2 photographs, do these photographs comport
3 with the sample list entry JBP-166?

4 A. Based upon the information
5 it appears to comport. Although the big
6 listing of stuff does not reference that.
7 It has a sample of baby lotion attached
8 to it.

9 Q. I'm sorry. Could you just
10 repeat what you said?

11 A. Sure. They appear to
12 comport. Although the listing for Number
13 166 on the list of offsite storage
14 samples does not mention that it has a
15 sample of baby lotion attached to it.

16 Q. So other -- other than the
17 absence of the reference to baby lotion,
18 do you believe that they comport?

19 A. It appears to.

20 (Document marked for
21 identification as Exhibit
22 Gurowitz-52.)

23 BY MR. LAPINSKI:

24 Q. I'm going to hand you

1 Exhibit 52. These are photos of sample
2 JBP-167. Based upon your review of the
3 photos, do these comport with the entry
4 for JBP-167 on the sample list?

5 A. It appears to, yes.

6 Q. Anything that would lead you
7 to believe that these are not accurate
8 photos of JBP 167?

9 A. Not that I can tell from the
10 photograph.

11 Q. And in 1960 J&J was still
12 using metal cans; is that correct?

13 A. That's -- in the U.S.,
14 that's correct, yes.

15 Q. Anything about the
16 photograph that would lead you to believe
17 that it's not an authentic J&J container?

18 A. I cannot tell from a black
19 and white photograph of a color artifact.
20 I'd really need to see it in color to
21 make that 100 percent determination.

22 (Document marked for
23 identification as Exhibit
24 Gurowitz-53.)

1 BY MR. LAPINSKI:

2 Q. I'm going to hand you
3 Exhibit 53. And these are photographs of
4 sample JBP 169. Based upon your review
5 of the photographs, do you believe these
6 photographs relate to the sample list JBP
7 169?

8 A. Based on the photographs and
9 the information on the sample list, it
10 appears to.

11 Q. And on the fourth page of
12 the document, there is a label reflecting
13 J -- the picture has -- strike that.

14 On the fourth page, the
15 bottle has a label on it indicating that
16 there was a change to the product,
17 correct?

18 A. The bottle has a product
19 change label indicating that there was
20 some sort of change to something.

21 Q. And do you know who the --
22 may have signed -- may have signed this
23 D-E-T-T-R-E?

24 A. I do not. 1966 is beyond

1 the institutional memory of any employee
2 currently at Johnson & Johnson.

3 Q. How about B&PD that says
4 next -- that's next to the name. Do you
5 know what that refers to?

6 A. I do not.

7 Q. Is this a sample that would
8 have been produced to the Johnson &
9 Johnson museum pursuant to the written
10 protocol that was in place at the time?

11 A. It is in that time frame,
12 and it has a product change number. So
13 likely it would -- it falls within that
14 time frame.

15 (Document marked for
16 identification as Exhibit
17 Gurowitz-54.)

18 BY MR. LAPINSKI:

19 Q. This is Exhibit 54. These
20 are photographs of JBP-175. Based upon
21 your review of the photos, do these
22 photos align with JBP-175 that is listed
23 on the sample list?

24 A. Based upon the photos and

1 the information, it does appear to align.

2 Q. And on the fourth page there
3 is a label referencing the change that
4 was made to the bottle; is that correct?

5 A. That is correct.

6 Q. And that was in 1972?

7 A. That is correct.

8 Q. And this sample would have
9 been produced to the J&J museum pursuant
10 to the policies that were in place at the
11 time?

12 A. It is during the time frame
13 that those policies were in place, so
14 likely it would have been.

15 Q. And the -- next to the label
16 reflecting the change there's a second
17 label that says SE-116. Do you see that?

18 A. I do.

19 Q. Do you know what that refers
20 to?

21 A. I believe that's a five,
22 actually, 5E-116. That refers to
23 something that was labeled -- I've seen
24 papers and on those transfer sheets

1 Drawer 5E.

2 Apparently that all of the
3 baby -- Johnson's Baby Powder artifacts
4 that were sent from the old Kilmer Museum
5 back to the operating company, they are
6 listed as being from Drawer 5E. Based on
7 the volume of those samples, I don't
8 think that there could physically exist a
9 drawer that big. So it had to refer to
10 some sort of unknown filing system.

11 Q. The 5E refers to a museum
12 filing system?

13 A. Some sort of filing system
14 that was used in the old law department
15 Kilmer Museum. Maybe more like a Dewey
16 decimal system like in a library, because
17 based on the amount of -- if you look at
18 how many things are labeled marketed, I
19 don't think you can physically construct
20 a drawer that big.

21 Q. Okay. Is it your
22 understanding that -- excuse me. Is it
23 your understanding that all of the
24 marketing samples that are listed in the

1 offsite storage list had a 5E designation
2 to them?

3 A. I don't know that every
4 single one of them did. But there were
5 things on the transfer sheets where it
6 said Drawer 5E and it had Johnson's Baby
7 Powder.

8 Q. And the transfer sheets that
9 you're referring to are the transfer
10 sheets of the -- well, strike that.

11 Which transfer sheets are
12 you referring to?

13 A. I'm referring to the 1982
14 transfer sheets to Leahy Business
15 Archives.

16 MR. LAPINSKI: I'm going to
17 go off the record for a minute. I
18 need two minutes.

19 THE VIDEOGRAPHER: The time
20 is 4:28 p.m. We are off the
21 record.

22 (Short break.)

23 THE VIDEOGRAPHER: We are
24 back on the record at 4:42 p.m.

1 (Document marked for
2 identification as Exhibit
3 Gurowitz-55.)

4 BY MR. LAPINSKI:

5 Q. Ms. Gurowitz, I'm going to
6 hand you a document that's been marked as
7 Exhibit 55.

8 I'm going to try to get you
9 one that doesn't have highlighting on it.

10 These photos indicate that
11 these are pictures of sample JBP 177.
12 Your review of the photographs, do these
13 photos correspond with the sample list
14 entry of JBP 177?

15 A. Yes, they appear to
16 correspond.

17 Q. And on the last page, if you
18 would look, there is a -- excuse me. A
19 change label on the bottle in the last
20 image, correct?

21 A. Correct.

22 Q. And that change label would
23 relate to the policy that was in place at
24 the time they produced this to the J&J

1 museum?

2 A. Yes, the date of 1966 is
3 within that time frame.

4 (Document marked for
5 identification as Exhibit
6 Gurowitz-56.)

7 BY MR. LAPINSKI:

8 Q. I'm going to hand you a
9 document that has been labeled as
10 Exhibit 56. And this indicates that it
11 is a sample associated -- it is photos
12 associated with sample JBP-183. If you
13 would review the photographs. Do these
14 photographs correspond with the sample
15 list entry of JBP-183?

16 A. Yes, it appears to
17 correspond.

18 Q. And on the fourth page, the
19 last photograph, there is a product
20 change label attached to the bottle,
21 correct?

22 A. That is correct.

23 Q. And would this bottle have
24 been produced pursuant to the written

1 policy that was in place at the time?

2 A. It was in that time frame.

3 So I think we could assume that it was.

4 (Document marked for
5 identification as Exhibit
6 Gurowitz-57.)

7 BY MR. LAPINSKI:

8 Q. Next exhibit is Exhibit 57.

9 And these are photographs of JBP-190.

10 And if you would review the photographs.

11 Based upon your review of the

12 photographs, do these samples -- these

13 photos correspond with the entry on the

14 sample list of JBP 190?

15 A. As best I could tell, they
16 can. Some of the photographs are blurry
17 so I cannot make out some of the
18 information.

19 Q. On the last photograph,
20 there is a sticker with the indication of
21 5E-154. Is that an indication that this
22 bottle would have been transferred from
23 the J&J museum at one point in time?

24 A. That is an indication. It

1 refers to whatever was meant by Drawer
2 5E. So since that was on that transfer
3 information, it would be a fairly strong
4 indicator that this likely is one of
5 those.

6 Q. And while the image is
7 blurry on the second page, there's an
8 image of a product change label, correct?

9 A. That is correct.

10 Q. And that's dated 1967?

11 A. I can't make out the date on
12 that. It's too blurry to see.

13 Q. Is that the label the type
14 of label that you would normally see on a
15 product that was sent to the J&J museum
16 after a label change?

17 A. That -- it looks like one of
18 those kind of change labels.

19 Q. And that would have been
20 sent pursuant to the policy that was in
21 place at J&J at the time?

22 A. If this is from 1967 that
23 falls within that time frame.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-58.)

3 BY MR. LAPINSKI:

4 Q. Next exhibit is Exhibit 58.
5 This is photographs of JBP-215. Based
6 upon your review of these photographs do
7 these photographs correlate with the
8 sample list entry JBP-215?

9 A. Yes, it appears to
10 correlate.

11 Q. And on the last page there
12 is a sticker with the designation 5E-146.
13 As we've discussed, would that relate to
14 transfer of this product from the J&J
15 museum?

16 A. It related to whatever
17 filing system the old museum used at that
18 time.

19 Q. And at the same page, the
20 top portion of the bottle has a label on
21 it, a sticker on it. It says 44-133.

22 Do you see that?

23 A. I do see that.

24 Q. Do you know what that would

1 refer to?

2 A. I do not.

3 Document marked for
4 identification as Exhibit
5 Gurowitz-59.)

6 BY MR. LAPINSKI:

7 Q. I'll hand you Exhibit 59.
8 This is for sample JBP-232. And if you
9 would review those pictures. Do the
10 photographs relate to the entry on the
11 sample list for JBP 232?

12 A. As best I can tell, I don't
13 see anything on the photograph of the
14 actual artifact that references container
15 volume or a year. So I cannot say for
16 100 percent certain.

17 Q. Has it been a common
18 practice for J&J to have container volume
19 and product year on their bottles?

20 A. No, not necessarily.
21 Container volume certainly, but year, not
22 necessarily.

23 Q. So it's not -- it's not
24 uncommon for a J&J -- a Johnson's Baby

1 Powder product to not have a year
2 designated on it?

3 A. That's correct. Some of --
4 some of the historical artifacts had been
5 labeled at some point in their past with
6 a stick-on label with a year, which is
7 helpful in helping identify when they
8 might be from.

9 Q. And the last page of this
10 photograph has a sticker on it with the
11 designation 5E-102, correct?

12 A. That is correct.

13 Q. And that is a designation
14 for the Johnson & Johnson museum filing
15 system?

16 A. That is a designation for
17 the old filing system in the old
18 Johnson & Johnson museum.

19 (Document marked for
20 identification as Exhibit
21 Gurowitz-60.)

22 BY MR. LAPINSKI:

23 Q. This is Exhibit 60. And
24 Exhibit 60 relates to sample JBP-237?

1 A. Yes. It appears to
2 correspond.

3 Q. And the second page has
4 designation 5E-149 relating to the old
5 museum filing system, correct?

6 A. Yes. It does refer to that
7 old filing system.

8 Q. And above that there's a
9 sticker with a designation, excuse me,
10 45-133. Do you know what that refers to?

11 A. I do not. We don't have any
12 information about what that would refer
13 to.

14 (Document marked for
15 identification as Exhibit
16 Gurowitz-61.)

17 BY MR. LAPINSKI:

18 Q. I'm going to hand you
19 Exhibit 61. Exhibit 61 relates to sample
20 JBP-294. Based upon your review of the
21 photographs, are these do these
22 photographs correspond with entry JBP-294
23 in the sample list?

24 A. JBP-294, no, they do not.

1 There are more than one, so actually I'm
2 just paging through it. On the sample
3 list, JBP-294 is listed as Johnson's Baby
4 Powder from 1984 for two 9-ounce bottles
5 in a cardboard box. That corresponds
6 with the photographs on Page 4 and
7 subsequent, but there is also on the
8 first three pages, there is a photograph
9 of a round container that's also listed
10 as JBP 294. This round container does
11 not correspond with that. It is not from
12 1984.

13 Q. So if we can, let's break
14 this down a little bit. The second half
15 of the exhibit that's been marked as
16 Exhibit 61 where there is -- beginning
17 with the photograph that has two 9-ounce
18 bottles of the Johnson's Baby Powder,
19 based upon your review of the -- of those
20 five total photos of the dual pack, we'll
21 call it, do those photos relate to the
22 sample entry JBP-294 on the sample list?

23 A. The photos of the two-pack
24 of Johnson's Baby Powder in the plastic

1 containers do appear to relate to JBP-294
2 on the sample list.

3 Q. And just to -- just to
4 confirm, if you could go through the
5 photos that are after the front image of
6 JBP 294 and just confirm that those
7 photos, to your knowledge, relate to the
8 double pack?

9 A. To my knowledge those photos
10 appear to relate to the double pack.

11 Q. And the second-to-last photo
12 has a change sticker on it, correct?

13 A. It does. But this one is
14 from 1984. This is after the date of
15 1982 that references when the old Kilmer
16 Museum, the Johnson & Johnson museum was
17 closed. And samples were no longer being
18 sent there.

19 So clearly this was
20 preserved somewhere and sent to offsite
21 storage. This was actually a -- it's
22 294. This was in quality assurance.
23 This is not part of things that were sent
24 from the old Johnson & Johnson museum.

1 Q. So this is -- this is a
2 sample that was maintained by the quality
3 assurance department?

4 A. This -- when I spoke to --
5 I'm sorry, just going to -- Mark Zappa in
6 quality, he checked around and he said
7 that it was not the policy or practice of
8 quality assurance to send samples to
9 offsite storage. So these had been
10 packed up in boxes with other stuff that
11 were labeled quality assurance and sent
12 to offsite storage.

13 So we don't know necessarily
14 how or who put them in those boxes or why
15 they were sent to offsite storage, but
16 they were among the things labeled
17 quality assurance. Clearly this is a
18 merchandising notice. But this postdates
19 anytime where it would have been sent to
20 the museum in New Brunswick.

21 Q. But the merchandising note
22 that's on it is a merchandising notice
23 that would typically be affixed to a
24 product by a J&J department?

1 A. It would have been, as I
2 mentioned, in the 1980s Johnson & Johnson
3 was a decentralized organization. So the
4 individual operating units had their --
5 had their own ways of doing things.

6 So clearly this indicates
7 that somebody in the consumer operating
8 unit was still sending out merchandising
9 notices. But they were not -- the
10 samples were not being preserved in New
11 Brunswick, because that museum had been
12 disbanded for those purposes by that
13 time.

14 Q. And as a separate operating
15 unit, you're referring to Johnson &
16 Johnson Consumer, Inc.?

17 A. Correct.

18 Q. If we can go to the first
19 three pages of that exhibit?

20 A. Sure.

21 Q. Based upon your review of
22 the first three pages of the exhibit, do
23 you have an understanding as to the year
24 of the Johnson's Baby Powder product

1 that's represented there?

2 A. Yes, I do. If you'll note
3 that it is a cylindrical container. And
4 if you look at Page 2, the picture on
5 Page 2. At the very bottom of the back,
6 it says, "Wartime container," so that
7 would have been circa 1942 during World
8 War II.

9 Metal was needed by the
10 United States for the war effort, so
11 Johnson & Johnson switched the containers
12 of Johnson's Baby Powder to a round
13 cardboard container at that time.

14 Q. So based upon your review of
15 the picture this is a round cardboard
16 container that's depicted?

17 A. It appears to be. It's hard
18 to tell on the picture on the first page,
19 but if you look at the back it says,
20 "Wartime container," which clearly
21 references World War II.

22 MS. FOURNIER: Can you give
23 us a copy?

24 BY MR. LAPINSKI:

1 Q. That was Exhibit 61?

2 A. Correct.

3 (Document marked for
4 identification as Exhibit
5 Gurowitz-62.)

6 BY MR. LAPINSKI:

7 Q. This is Exhibit 62. And
8 these are photos of JBP 295. And based
9 upon your review of these photographs, do
10 the photos correspond with the sample
11 list entry JBP 295?

12 A. Based upon the photograph,
13 they appear to correspond with that
14 sample entry.

15 MR. LAPINSKI: Do you want
16 to go off the record for a minute?

17 MS. FOURNIER: Yes.

18 THE VIDEOGRAPHER: The time
19 is 4:58 p.m. We are off the
20 record.

21 (Brief pause.)

22 THE VIDEOGRAPHER: Back on
23 record at 5:00 p.m.

24 BY MR. LAPINSKI:

1 Q. Ms. Gurowitz, you have in
2 front of you Exhibit 62. And I believe
3 you had already testified that this does
4 appear to correspond with the sample list
5 entry JBP 295, correct?

6 A. As best as I can tell. It
7 appears to. In the -- in the column that
8 says, "Approximate contents of container,
9 one bottle only." These are clearly two
10 packs. So I'm not sure what that
11 reference is.

12 Q. The container -- going to
13 the sample list, just to confirm. The
14 container volume does say two 9-ounce
15 bottles in cardboard box, correct?

16 A. Yes, it does.

17 Q. Okay. And on the fourth
18 page there is again one of the
19 merchandising label change stickers,
20 correct?

21 A. That is correct.

22 (Document marked for
23 identification as Exhibit
24 Gurowitz-63.)

1 BY MR. LAPINSKI:

2 Q. We're switching back now no
3 Shower to Shower.

4 A. That means I have to re-find
5 that.

6 Q. We're going to be starting
7 with the beginning of the Shower to
8 Shower. So it's actually going to be --

9 A. I can't get used to the
10 double-sided.

11 Q. Page ID 11884.

12 A. 1884. Okay.

13 Q. Now, the page that you're
14 looking at, you're looking at the top of
15 the page. Are you starting there with
16 STS003?

17 A. The top of Page 11884 --

18 Q. You have the --

19 A. -- on mine has JBP-288.

20 Q. Okay. We're on the same
21 page.

22 This is Exhibit 63. And
23 this is indicated to be photographs of
24 STS001. Based upon your review of the

1 photographs, do these photographs
2 correspond to the sample list entry
3 STS001?

4 A. It appears to correspond,
5 yes.

6 Q. Okay. On the second page,
7 there is a sticker that says, "1982,
8 55M-645."

9 Do you know what that refers
10 to?

11 A. 1982, obviously would refer
12 to the year. 55M-645 was some sort of
13 identifying number.

14 Q. And do you know the purpose
15 of that identifying number?

16 A. I do not.

17 Q. Would that have been a
18 practice within J&J to affix that
19 identifying number to some type of a
20 sample product?

21 A. The samples, the ones with
22 the marketing notices had a much longer
23 number. And it would say merchandise
24 notice with a multi-digit number. So

1 this looks like it was not relating maybe
2 to a marketing notice but some other type
3 of filing system.

4 Again, this is from 1982,
5 which was the year that the old museum
6 was closed. So I don't know whether this
7 would have been sent to that museum
8 before the closing was done or if it was
9 after. It's possible it never was sent
10 to New Brunswick.

11 Q. If it wasn't sent to New
12 Brunswick, then it would have been
13 maintained at J&J consumer Inc.?

14 A. Potentially. This is -- it
15 is labeled -- it was in the box with the
16 marketing materials according to the
17 list.

18 Q. And are you able to -- are
19 you able to ascertain the year on the
20 bottle, other than the date that written
21 on the sticker based upon the
22 photographs?

23 A. Based upon the photographs I
24 am not able to do that.

1 (Document marked for
2 identification as Exhibit
3 Gurowitz-64.)

4 BY MR. LAPINSKI:

5 Q. This is Exhibit 64,
6 photographs of STS002.

7 Based upon your review, do
8 these photographs -- are these
9 photographs correspond to STS002 in the
10 sample list?

11 A. It appears to correspond.

12 Q. And on the second page of
13 the photographs, there is a marketing
14 label change sticker, correct?

15 A. That is correct.

16 Q. And this is a sample that
17 normally would have been produced to the
18 museum pursuant to the policy that was in
19 place at that time?

20 A. It's dated 1980. So it is
21 two years before the memo saying it was
22 going to close. So it's possible that it
23 was.

24 Q. Is there anything that would

1 lead you to believe that it was not
2 produced pursuant to the policies that
3 were in place at that time?

4 A. I don't have enough
5 information to make that determination.

6 Q. There's nothing that would
7 indicate that it was not produced
8 pursuant to that policy, correct?

9 A. Again, there's not enough
10 information either way. One can assume
11 based on that sticker and the date on it.

12 (Document marked for
13 identification as Exhibit
14 Gurowitz-65.)

15 BY MR. LAPINSKI:

16 Q. I'm going to hand to you a
17 document that's been marked as Exhibit
18 65. This is photographs of STS003.
19 Based upon your review of the
20 photographs, do these photos correspond
21 with the listing in the sample list of
22 STS003?

23 A. It appears to correspond,
24 yes.

1 Q. And this particular product
2 has a couple different stickers on it.
3 On the front page there is a sticker with
4 the number 707A. Do you know what that
5 refers to?

6 A. I do not.

7 Q. And there is also a sticker
8 indicated property of PPC museum,
9 correct?

10 A. Correct.

11 Q. And as we discussed before,
12 what does PPC stand for?

13 A. PPC stands for Personal
14 Products Corporation. It is a
15 no-longer-existing historical subsidiary
16 of Johnson & Johnson.

17 Q. And then on the second page
18 there is a merchandising notice change
19 label, correct?

20 A. That is correct.

21 Q. And I can't make out the
22 date on that label change. But do you
23 know what the approximate date of this
24 product is?

1 A. On the -- on the list it
2 says -- it says 1969.

3 The date is blurry. It
4 looks like 11/6, and the year is too
5 blurry to make out.

6 Q. If this were a product from
7 1969, this would have been produced to
8 the museum pursuant to the policies that
9 were in place at that time?

10 A. It falls in those time
11 parameters, yes. I do note that in the
12 column, approximate contents of
13 container, this one is not full. So
14 somehow in whatever journey it took to
15 get wherever it went, it ended up as
16 three-quarters full instead of full.

17 So again, since we cannot
18 put together an end-to-end chain of
19 custody for one of these historic
20 artifacts, appears from about 1969, we
21 don't know how, when, or why it ended up
22 with some contents missing.

23 Q. And as far as chain of
24 custody is concerned, there is nothing in

1 the photograph or on the bottle itself
2 that would lead you to believe that at
3 any time the bottle was out of the
4 custody of Johnson & Johnson?

5 A. We don't know. At some
6 point it was clearly opened because there
7 are contents missing. So we have no way
8 to determine whether it was -- no way to
9 determine what the full chain of custody
10 is. There's just not enough historical
11 information.

12 Q. Well, even if the bottle was
13 sealed and full, there's no indication
14 that it was ever outside of the custody
15 of Johnson & Johnson, correct?

16 A. Well, the bottle wasn't
17 sealed. Safety seals on consumer
18 packaging was not a thing until the
19 1980s. So a bottle from 1969 would never
20 have been sealed.

21 And we don't know. We do
22 know that this is noted as being
23 three-quarters full. So clearly at some
24 point contents were removed. We don't

1 know how or by who or for what purpose.
2 And so that is just part of not being
3 able to trace an end-to-end chain of
4 custody for this artifact.

5 (Document marked for
6 identification as Exhibit
7 Gurowitz-66.)

8 BY MR. LAPINSKI:

9 Q. I'll hand you Exhibit 66.
10 These are photographs of
11 STS004. Based upon your review of the
12 photographs, does this bottle correspond
13 to the entry in the sample list for
14 STS004?

15 A. As best as I can tell, it
16 does. One of the things that I've been
17 looking at is not just the number on the
18 Post-It. But the volume listed on the
19 package. And this has stickers on it, so
20 I cannot see if there is a volume listed.
21 So I'm basing that on the number, because
22 I also don't see a date -- oh, yeah.
23 There's a '68 date on here, so that also
24 corresponds.

1 Q. And where is the '68 date
2 that you're looking at?

3 A. On the second page, the
4 photograph of the back, there's a
5 merchandising notice label. And you can
6 just make that out at the top of that
7 label.

8 Q. So it's the 3/20/68 date
9 that you're referring to on the
10 merchandising label?

11 A. Yes.

12 Q. Okay. And that
13 merchandising notice label is the label
14 that would be affixed to the product when
15 it was sent to the museum pursuant to the
16 policy in place, correct?

17 A. Sent to -- well, it was --
18 it would have been, but it also says
19 property of PPC, Milltown, New Jersey.
20 It was sent to either the old law
21 department Kilmer museum or the PPC
22 museum. I don't have enough information
23 to determine which one.

24 Q. Both of those facilities are

1 Johnson & Johnson facilities, correct?

2 A. The Kilmer Museum is
3 definitely a Johnson & Johnson facility.
4 I don't have enough information about the
5 PPC museum or what it was to make that
6 determination. It does say it was in
7 Milltown, New Jersey, and the
8 headquarters of Personal Products was in
9 Milltown. So that's as far as a
10 determination I could make.

11 Q. Personal products was a J&J
12 company, correct?

13 A. It's a historical,
14 no-longer-existing company.

15 Q. It was a J&J company in
16 March of 1968 correct?

17 A. I would have to research
18 that to confirm that. I couldn't tell
19 you. I mean, I don't know when that
20 sticker from -- it's a historical
21 company. I would have to look through
22 records to determine whether that was
23 around in '68.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-67.)

3 BY MR. LAPINSKI:

4 Q. Exhibit 67. This is for
5 STS005. Based upon your review of these
6 photographs, do the photographs
7 correspond with the sample list entry for
8 STS005?

9 A. Yes, they appear to
10 correspond.

11 Q. And on the back there is a
12 sticker. It says 1982, and below that it
13 says 55M-644. Do you have any
14 understanding as to what that refers to?

15 A. I do not. I would assume
16 1982 would be the date though.

17 (Document marked for
18 identification as Exhibit
19 Gurowitz-68.)

20 BY MR. LAPINSKI:

21 Q. This is Exhibit 68. This is
22 STS011. And in your review of the
23 photographs, do these photos correspond
24 to the sample list entry STS011?

1 A. They appear to correspond,
2 yes.

3 Q. And there is a sticker on
4 the first page that says, "New STS Spice
5 with baking soda" -- "baking
6 soda/cornstarch," correct?

7 A. Correct.

8 Q. And do you know what that's
9 a reference to?

10 A. Obviously -- so potentially
11 a label change because it's noted on the
12 label. However, this one is from 1985,
13 this is after the old museum closed. So
14 this would not have been sent to that
15 museum in New Brunswick.

16 Q. And are you aware whether it
17 continued to be a practice after 1982
18 when the museum closed for Johnson &
19 Johnson Consumer to retain product
20 samples after there was a change to the
21 label?

22 MS. FOURNIER: Objection.

23 Outside the scope.

24 THE WITNESS: There is no

1 information that we have regarding
2 the policy of a no-longer-existing
3 operating unit.

4 BY MR. LAPINSKI:

5 Q. In 1980 -- in 1985, who was
6 the manufacturer of Shower to Shower?

7 A. If you look at the second --
8 the photograph of the back, it says
9 Personal Products Company, Milltown, New
10 Jersey.

11 Q. And do you know when
12 Personal Products Company went out of
13 existence?

14 A. I would have to look that
15 up.

16 (Document marked for
17 identification as Exhibit
18 Gurowitz-69.)

19 BY MR. LAPINSKI:

20 Q. This is Exhibit 69. And
21 these photos pertain to STS012. Based
22 upon your review of the photos, do the
23 photos correspond to sample list entry
24 STS012?

1 A. They appear to correspond.

2 Q. And on the second page there
3 is a promotional bulletin from November
4 of 1980, correct?

5 A. That is correct.

6 Q. And that would be during the
7 period of time that there was a policy in
8 place for samples to be sent from the
9 Johnson & Johnson unit to the Johnson &
10 Johnson museum?

11 A. That would fall before 1982,
12 so presumably, yes.

13 (Document marked for
14 identification as Exhibit
15 Gurowitz-70.)

16 BY MR. LAPINSKI:

17 Q. Exhibit 70. These
18 correspond to STS013. And if you would
19 review the photographs, do the
20 photographs depict what is in the sample
21 list entry STS013?

22 A. They appear to do so, yes.

23 Q. And on the second page there
24 is a merchandise notice from September of

1 1976, correct?

2 A. That is correct.

3 Q. And that notice and this
4 product would fall within the time period
5 where there was a policy for sample
6 products with label changes to be sent to
7 the J&J museum, correct?

8 A. They would. But on the
9 photograph of the front of this, it says
10 property of PPC museum Milltown, New
11 Jersey. So we don't have any information
12 on whether this was sent to New Brunswick
13 or sent to whatever the PPC museum in
14 Milltown was.

15 Q. The PPC museum was a
16 Johnson & Johnson-owned company, correct?

17 A. Personal Products was a
18 Johnson & Johnson affiliate --
19 subsidiary, affiliate.

20 Q. Personal Products Company
21 was an affiliate of Johnson & Johnson,
22 correct?

23 A. Yes.

24 Q. And is it your understanding

1 that the PPC museum was part of Personal
2 Products?

3 A. There is no one at Johnson &
4 Johnson currently who dates back that far
5 regarding employment, so nobody knows.

6 It was obviously in Milltown
7 where personal products was
8 headquartered. That's about as far as we
9 can go without having any more
10 information.

11 Q. Is there anything that would
12 lead you to believe that the product
13 depicted in Exhibit 70 for STS013 was not
14 at the personal products organization in
15 Milltown?

16 A. There's just not enough
17 historical information existing. This
18 one interestingly is also noted as being
19 half full. So sometime during its
20 existence it was opened and half the
21 contents are no longer there.

22 So we don't know, again,
23 when that happened. That's just part of
24 not being able to recreate an entire sort

1 of chain of where this was at every
2 moment in its history.

3 Q. Well, do you have any
4 evidence that would indicate that there
5 was any point in time where this sample
6 bottle was not in the custody of
7 Johnson & Johnson or a Johnson & Johnson
8 subsidiary?

9 A. We do not have enough
10 information to make that determination.

11 (Document marked for
12 identification as Exhibit
13 Gurowitz-71.)

14 BY MR. LAPINSKI:

15 Q. I'll hand you Exhibit 71.
16 These are photographs related to STS016.
17 And if you look at these photographs, do
18 these photographs correspond to the
19 sample list entry STS016?

20 A. Yes, they do appear to
21 correspond.

22 Q. And on the second -- second
23 page, there is a promotional bulletin
24 notice reflecting a change, correct?

1 A. That is correct.

2 Q. And that's from 11/7/1980,
3 which is during the period of time that
4 Johnson & Johnson had a policy in place
5 for label changes to be produced to the
6 museum?

7 A. That is correct. This one
8 also is half full. So we don't know --
9 so we don't know why this is half full.
10 Again, we can't trace an entire chain of
11 custody. Just sort of very small pieces
12 of that. So we don't know why this is
13 half full. Was it something that was --
14 stayed within Johnson & Johnson. Did
15 somebody at one point in time say, "We
16 need an example of this kind of
17 packaging," and this was donated by
18 somebody because it was the type of
19 packaging they needed. We just don't
20 know.

21 Q. That's just speculation on
22 your part?

23 A. It is speculation.

24 Q. You have no evidence that

1 would indicate that this was any period
2 of time that this particular sample was
3 out of the custody of either Johnson &
4 Johnson or a Johnson & Johnson company?

5 A. That's because we don't have
6 evidence regarding its entire chain of
7 custody. There's just not enough
8 information to piece together a full
9 enough chain of custody for this.

10 Q. So you -- so you don't have
11 evidence that would indicate that it was
12 ever out of the control of Johnson &
13 Johnson or Johnson & Johnson company?

14 A. We don't. But we also don't
15 have evidence to show that it -- there's
16 not enough evidence to prove that it --
17 or to show that it was in control. It
18 could have been either way. There's just
19 not enough evidence.

20 (Document marked for
21 identification as Exhibit
22 Gurowitz-72.)

23 BY MR. LAPINSKI:

24 Q. I'll hand you Exhibit 72.

1 And these are photographs
2 related to STS017. Based upon your
3 review of the photographs do these
4 photographs relate to sample list entry
5 STS017?

6 A. They appear to correspond,
7 yes.

8 Q. And on the second page of
9 the photographs, there are merchandise
10 notice labels attached to it, correct?

11 A. That is correct.

12 Q. And they're from 1974?

13 A. Yes.

14 Q. And that's during a period
15 of time when Johnson & Johnson had a
16 policy in place that changes to the
17 label, samples would be sent to the
18 Johnson & Johnson museum?

19 A. That is correct. It does
20 fall during that time.

21 (Document marked for
22 identification as Exhibit
23 Gurowitz-73.)

24 BY MR. LAPINSKI:

1 Q. Exhibit 73. This is related
2 to STS018. Based upon your review of the
3 photographs, do these photos relate to
4 the sample list entry STS018?

5 A. They appear to relate to it,
6 yes. Here again, this is from -- marked
7 as being from 1985, which is after the
8 old Johnson & Johnson museum was closed.
9 So this was not something that would have
10 been sent to that entity in New
11 Brunswick.

12 Q. But this is something that
13 was maintained in Johnson & Johnson's
14 offsite storage, correct?

15 A. It was found in offsite
16 storage among boxes that were labeled
17 marketing. But we do not know how it
18 originally got into those.

19 (Document marked for
20 identification as Exhibit
21 Gurowitz-74.)

22 BY MR. LAPINSKI:

23 Q. Exhibit 74. And these
24 photographs relate to STS021. Based upon

1 review of the photographs, do these
2 photographs relate to the entry on the
3 sample list for STS021?

4 A. It appears to correspond.
5 And, again, this is half full.

6 (Document marked for
7 identification as Exhibit
8 Gurowitz-75.)

9 BY MR. LAPINSKI:

10 Q. This is Exhibit 75. These
11 are related to STS031. Based upon your
12 review of these photographs, do these
13 photos correspond with the sample list
14 entry STS031?

15 A. It appears to. This notes
16 that this was part of a twin pack but
17 there is only one bottle from that twin
18 pack. If that's the case, it appears to
19 correspond based on this information.

20 Q. Based upon the two
21 photographs that are there, are you able
22 to make a definitive determination that
23 there's only one bottle, or is it
24 possible that there's a second bottle and

1 these are stacked one on top of another?

2 A. I cannot tell from the
3 photograph.

4 Q. Okay. There is a sticker on
5 the second page of the photograph,
6 correct?

7 A. Yes. There are several
8 stickers.

9 Q. Okay. And the sticker at
10 the top does refer to a merchandise
11 notice change from 1969?

12 A. That's correct.

13 Q. And it also refers to
14 12-and-a-half-ounce twin pack, correct?

15 A. That is correct.

16 Q. And would that -- the
17 references on that sticker conform to the
18 entry and the information in the sample
19 list for STS031?

20 A. It would. The sample list
21 notes that there's -- it says plastic
22 curved bottle. So I assume that means
23 there's only one bottle.

24 Q. And the merchandise notice

1 on the second page, that notice from 1969
2 was during the period of time where the
3 Johnson & Johnson company would send a
4 sample of the product to the Johnson &
5 Johnson museum at the time there was a
6 change, correct?

7 A. It was during that time.
8 However, the label at the bottom of the
9 back says "Property of PPC Museum,
10 Milltown, New Jersey." We do not know if
11 this was sent to the old Johnson &
12 Johnson museum in New Brunswick or the
13 PPC museum, whatever that might have
14 been.

15 Q. Okay. PPC was a Johnson &
16 Johnson company at the time that it was
17 in existence, correct?

18 A. I believe it was in
19 existence in 1959. But I would have
20 to -- would have to look it up to confirm
21 that.

22 Q. My question was when it was
23 in existence it was a Johnson & Johnson
24 company?

1 A. Yes.

2 (Document marked for
3 identification as Exhibit
4 Gurowitz-76.)

5 BY MR. LAPINSKI:

6 Q. Ms. Gurowitz, I'm going to
7 hand you a document that has been marked
8 as Exhibit 76. If you can take a minute
9 to review that, I would appreciate it.
10 If you would let me know when you are
11 ready for me to ask a couple questions
12 regarding this exhibit.

13 A. I'm ready.

14 Q. Ms. Gurowitz, earlier today
15 you had mentioned a couple times that
16 there were transfer records that you had
17 reviewed in preparation for your
18 deposition, correct?

19 A. Correct.

20 Q. And they related to the
21 transfer of offsite storage materials
22 from Johnson & Johnson to Leahy business,
23 correct?

24 A. Correct.

1 Q. Is Exhibit 76 the document
2 that you were referring to?

3 A. Yes, it appears to be so.

4 (Document marked for
5 identification as Exhibit
6 Gurowitz-77.)

7 BY MR. LAPINSKI:

8 Q. I'm going to hand you a
9 document that has been marked as
10 Exhibit 77.

11 A. And I just want to say, it
12 was -- these were the -- transferred from
13 the operating unit, the consumer. This
14 is -- here it's called -- it says
15 Johnson & Johnson Baby Products.

16 Q. Okay. So -- so I understand
17 correctly, the purpose for your
18 clarification is that it was not
19 transferred by Johnson & Johnson. It was
20 transferred by their operating unit, was
21 Johnson & -- at the time was Johnson &
22 Johnson Baby Products?

23 A. Correct.

24 Q. I think I was going to hand

1 you, did I hand you Exhibit 77?

2 A. Yes.

3 Q. Ms. Gurowitz, have you seen
4 this document before?

5 A. I believe I have, yeah.

6 Q. And is this a document that
7 you reviewed in preparation for your
8 deposition?

9 A. I believe so, yes.

10 Q. And on the first page
11 there's a listing of advertisements and
12 promotional materials.

13 Do you see that?

14 A. I do.

15 Q. And were ads also sent to
16 storage?

17 A. It appears from these
18 documents that they were, yes.

19 Q. Are you aware, other than
20 Exhibits 76 and 77, are you aware of any
21 other transfer documents related to
22 talcum powder products or the samples
23 that are contained on the sample list?

24 A. I am not. I don't see

1 Shower to Shower on here. But I'm not
2 aware, that I can think of, of any
3 others.

4 Q. If you would go back to
5 Exhibit 49, please.

6 Got it?

7 A. Yes.

8 Q. Okay. And we had talked
9 briefly in regard to Exhibit 49 and the
10 sample JBP-135.

11 If you would turn to the
12 second page, which again has the Reg
13 Number 74,097.

14 Do you see that?

15 A. Yes, I do.

16 Q. Did you testify earlier that
17 that was a trademark registration number?

18 A. I don't know that for a
19 fact, but I said based on the fact that
20 the larger label that you can see on Page
21 3 and 4 says "U.S. trademark
22 application," it's possible that could
23 refer to that.

24 Q. And if that were a trademark

1 registration, would this sample have been
2 kept as part of a retention policy?

3 A. It likely -- it falls into
4 those time parameters, so it's possible
5 that it was. We don't have any
6 information regarding keeping samples for
7 trademark registration, just for labeling
8 changes.

9 Q. If I recall, did you testify
10 earlier that it was a practice of the
11 Johnson & Johnson legal department to
12 retain samples related to trademark?

13 A. Related to trademark
14 history, yes.

15 Q. Okay. If you would go to --
16 lastly, go back to Exhibit 61. The first
17 three pages of -- I'll wait till you get
18 to it.

19 This is the exhibit that had
20 two different products for JBP-294. And
21 what I'd like you to do is just look at
22 the first three pictures that relate to
23 the old canister we discussed that I
24 believe was a wartime canister.

1 If you would look at STS016
2 in the sample list -- I'm sorry, JBP-016
3 in the sample list.

4 A. I'm going to get there.

5 Q. It's on Page ID 11866.

6 A. I have Page 11866. I'm
7 sorry. Could you repeat the number?

8 Q. Sure. JBP-016?

9 A. Okay.

10 Q. And as based upon your
11 review of those three documents, do those
12 photographs correspond with the sample
13 list entry JBP-016?

14 A. They appear to.

15 Q. Okay.

16 MR. LAPINSKI: Off the
17 record.

18 THE VIDEOGRAPHER: The time
19 is 5:34 p.m. We are off the
20 record.

21 (Brief pause.)

22 THE VIDEOGRAPHER: We are
23 back on the record at 5:35 p.m.

24 BY MR. LAPINSKI:

1 Q. Ms. Gurowitz, you have been
2 responsible for the maintenance of
3 samples at the J&J museum since 2006,
4 correct?

5 A. Correct.

6 Q. Okay. Were you ever
7 provided with a litigation hold notice by
8 Johnson & Johnson?

9 MS. FOURNIER: Objection.
10 Outside the scope.

11 THE WITNESS: For this I
12 was, yes.

13 BY MR. LAPINSKI:

14 Q. And when -- when were you
15 provided with that?

16 MS. FOURNIER: Objection.

17 THE WITNESS: I don't
18 remember when it came out. So I'd
19 have to go back and look.

20 BY MR. LAPINSKI:

21 Q. Within the last year?
22 Within the last two years?

23 A. It's safe to say within the
24 last two years.

1 MR. LAPINSKI: Okay. I have
2 no further questions.

3 THE VIDEOGRAPHER: The time
4 is 5:35 p.m. We are off the
5 record.

6 (Brief pause.)

7 THE VIDEOGRAPHER: We are
8 back on the record at 5:37 p.m.

9 MS. FOURNIER: As I begin,
10 because I've now been reprimanded
11 by my colleagues multiple times,
12 I'm going to put on the record
13 what we discussed, which is an
14 objection by one is an objection
15 for all.

16 Do you have any issue with
17 that?

18 MR. LAPINSKI: No problem
19 with that.

20 MS. FOURNIER: Thank you.

21 - - -

22 EXAMINATION

23 - - -

24 BY MS. FOURNIER:

1 Q. Good afternoon,
2 Ms. Gurowitz. I have a couple questions
3 to ask you on behalf of Johnson &
4 Johnson.

5 I want to start by having
6 you look at the list, the sample list.
7 We've spent a lot of time talking about
8 the section that is -- we're just sort of
9 referring to as the offsite storage,
10 right?

11 A. Correct.

12 Q. Can you just walk us
13 through, so that everyone is on the same
14 page, the sequence of where the bottles
15 on that section sort of start to finish,
16 where they were?

17 A. Sure. So I have been
18 researching and attempting to put
19 together a chain of custody. And
20 unfortunately, we do not have enough good
21 information to do that.

22 So when the call went out to
23 locate any potential samples that might
24 be around, these samples were discovered

1 in offsite storage. They had been there
2 so long that nobody literally knew that
3 they were there, it came as a surprise to
4 everyone. I had -- I had long heard that
5 in many cases, when the objects were sent
6 back to the operating units from the old
7 Johnson & Johnson museum, that, you know,
8 nobody knows what happened to them
9 because nobody is still around from that
10 time.

11 So I think that nobody knew
12 that these had been in offsite storage.
13 And so it was discovered that they were
14 in offsite storage. And then I attempted
15 to put together, based -- you know, if I
16 could, based on the information that
17 still existed, a chain of custody.

18 And unlike the PTI samples,
19 where they're modern, people keep
20 records, now there are electronic
21 records, these are so old that they're
22 just -- the records were not there.

23 We can assume from those
24 marketing notices that in the time

1 between the '50s and the '70s, maybe
2 perhaps up to 1982 or close to that, that
3 whenever there are -- as per the law
4 department, whenever there was a
5 packaging change or a change to the
6 label, that they sent a sample to the old
7 Johnson & Johnson museum, which was run
8 by the law department, so they could
9 preserve trademark history of the
10 products.

11 There are a lot of products
12 that are labeled as marketing that fall
13 outside those parameters. The people I
14 talked to in marketing, including Barbara
15 Brewer, who is one of the longest -- she,
16 I think, was the longest-tenured person
17 that Sarita Finnie could find, and she
18 even did not know how those got there.

19 So there are things that
20 were in those -- in those boxes labeled
21 marketing that may not have come from the
22 old law department museum. They just --
23 whoever made that determination might
24 have seen, okay, these are product

1 samples. We'll just call them marketing
2 in the same way that if you had a box
3 full of staplers, you might call it
4 office supplies.

5 Q. Okay. And so part of the
6 bottles or some of the bottles, you do
7 believe came from the old museum; is that
8 right?

9 A. That is correct.

10 Q. And then at some point those
11 were sent back to what you keep referring
12 to as the, quote, operating companies,
13 correct?

14 A. Correct.

15 Q. And do we have any
16 information about, when those were sent
17 to the operating companies, what did
18 people do with them?

19 A. Based on the transfer sheets
20 and based on the memo about closing the
21 old law department, the Kilmer Museum, it
22 looks like that was done in the 1982 time
23 frame.

24 And so when we were engaged

1 in the project to restore the museum in
2 the 2014 to 2016 time frame, I had
3 reached out to folks at the operating
4 companies because we were looking for
5 artifacts to display from a variety of --
6 a variety of places in the company.

7 And I said, "Do you have any
8 of these old products?" And nobody knew
9 anything about them. They said, "No,
10 this is way before our time. We would
11 presume we don't have these. Nobody
12 knows. Nobody has even heard of this."

13 Q. So all we know is that
14 sometime after 1982, but when exactly we
15 don't know; is that fair?

16 A. Correct.

17 Q. Okay. So shifting gears
18 slightly, we then talked about the
19 merchandise notice change -- change
20 orders, right? And one of the questions
21 that I wanted to ask you about is we
22 looked at that policy. And does that
23 policy have -- does that policy state
24 that the samples sent have to be new

1 samples?

2 MR. LAPINSKI: Object to the
3 form of the question.

4 THE WITNESS: They do not.

5 BY MS. FOURNIER:

6 Q. Does it state whether they
7 have -- they can be open or closed?

8 A. The policy did not mention
9 anything about open or closed. It just
10 said we need to capture examples of
11 changes to the labeling or package shape.

12 MR. LAPINSKI: Objection.

13 BY MS. FOURNIER:

14 Q. Does the policy refer to
15 whether the package needs to be sourced
16 from J&J or an outside source?

17 A. It did not.

18 Q. So do you know with respect
19 to the bottles that have those
20 merchandise notice change on them, what
21 the original source of the bottle is?

22 A. No, we do not.

23 Q. In addition, during that
24 period of time of the 1960s to 1980s, is

1 it fair to say that there was some
2 collection of bottles that did not come
3 into the possession of the museum because
4 of merchandise notice changes?

5 MR. LAPINSKI: Object to the
6 form of the question.

7 THE WITNESS: That is
8 correct.

9 BY MS. FOURNIER:

10 Q. So if you can go and dig out
11 of your pile, I want you to take out
12 Exhibit 43 and 45.

13 A. I have to dig.

14 Q. It's relatively early in the
15 Johnson's Baby Powder set?

16 A. Okay. I'm looking. They
17 start in the '70s for some unknown
18 reason.

19 MR. LAPINSKI: What are the
20 JBP numbers that they relate to?

21 MS. FOURNIER: Exhibit 45 is
22 JBP-099, and Exhibit 43 is
23 JBP-096.

24 THE WITNESS: It was -- I'm

1 sorry. Could you just tell me
2 exhibit --

3 BY MS. FOURNIER:

4 Q. 45 and 43. 43 and 45 is
5 probably the order you'll come across
6 them.

7 A. Here is 45.

8 Q. Let's start with 45 then.

9 A. Sure.

10 Q. Turn to the fourth page of
11 45. It's a picture of one of the sides.

12 A. Yes.

13 Q. And it has taped to it a
14 sticker. What is your understanding of
15 what that -- that label or whatever you
16 want to call it taped to it is?

17 A. My understanding is that
18 corresponds to a merchandising notice
19 from 1/15/1970, Johnson's Baby Powder
20 hospital, four ounces. I do not know
21 what Hadley PPD refers to.

22 Q. And so earlier in your
23 testimony you said that you could surmise
24 that this came into the possession of the

1 museum because of the merchandise notice
2 changes; is that right?

3 A. That's possible. Yes.

4 Q. So let's look at Exhibit 43
5 if you will. Okay. If you look at
6 Exhibit 43, do any of the pictures
7 contain a label like the one we were
8 looking at on Exhibit 45?

9 A. No, they do not.

10 Q. Do we have any knowledge of
11 how this particular bottle came into
12 possession of the old museum?

13 A. We do not. We do not.

14 Q. Okay. I'd also like you to
15 take a quick look at Exhibit 49, which we
16 have looked at a couple times now. What
17 can you tell us, if anything, about these
18 sorts of containers and how the lid
19 works?

20 A. Okay. So these are slightly
21 older containers. This one has two
22 dates, 1963 and 1964. So as I mentioned,
23 products were not sealed until the 1980s.
24 So this would have been open. You could

1 open it and access the contents at any
2 time.

3 The top, there's not a
4 photograph of the top, I believe. But
5 the top was sort of a twist container
6 where you would just twist it, and it
7 would line up holes, which would open,
8 and then you could access the contents.

9 Q. And can you screw this top
10 all the way off?

11 A. You can take that top off.
12 If you notice, there's kind of a -- lip
13 isn't the right word, but the top -- the
14 top part that has the very top of the
15 container, it's a separate piece from the
16 rest of the container. So you would be
17 able to pull that off.

18 Q. And so do you know if the
19 contents of the powder in this particular
20 container, do we have any way of knowing
21 whether it was the original powder from
22 this container?

23 MR. LAPINSKI: Object to
24 form of the question.

1 THE WITNESS: We don't. And
2 if you look -- if you look at the
3 first photograph, the front page,
4 if you look at the right side of
5 that container, it looks like
6 there is a gap there. And it's a
7 little higher than on the left.

8 So it looks like that may
9 have been pulled off at some
10 point.

11 BY MS. FOURNIER:

12 Q. During this period of time,
13 do you know if the museum also received
14 donations?

15 A. The museum has received
16 donations for many decades. So yes, it
17 would be likely we received donations.

18 MS. FOURNIER: Can I get
19 some stickers? Thank you.

20 (Document marked for
21 identification as Exhibit
22 Gurowitz-78.)

23 BY MS. FOURNIER:

24 Q. I'm going to pass you

1 something. I think we're on 78.

2 Actually, I've handed you
3 something that we marked as Exhibit 78,
4 which is two pages. First can you just
5 look at those and tell me if they appear
6 to be the same picture just one in black
7 and white and one in color?

8 A. They appear to be the same
9 picture.

10 Q. Okay. And have you seen
11 these pictures before?

12 A. Yes.

13 Q. What can you tell us about
14 this particular bottle based on these
15 pictures?

16 A. This is a very rusted tin, a
17 Johnson's Baby Powder tin in very poor
18 condition. By the trademark, it's got
19 the red chain, the circular logo. So
20 that looks like it was marketed outside
21 of the United States. And this was one
22 that was found in a shipwreck. So
23 presumably it was somewhere at the bottom
24 of the ocean.

1 BY MS. FOURNIER:

2 Q. So do you think this is
3 potentially an example of a donation
4 during the period?

5 A. I think this is absolutely
6 an example of something that was donated.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-79.)

10 BY MS. FOURNIER:

11 Q. Let me mark the next one as
12 79. Let's start with 79. The same
13 question. If you can just look at the
14 two pages and confirm that this is a
15 black-and-white but then a color photo of
16 the same bottle?

17 A. Yes, I can confirm that.

18 Q. And can you read for us what
19 this particular bottle says on it?

20 A. Sure. It says, "Sample from
21 Mr. Burchfield's cabinet, return 1928."

22 Q. Any idea who Mr. Burchfield
23 is?

24 A. No idea.

1 Q. Do you know if he worked at
2 J&J or was outside the company?

3 A. We have no way of knowing
4 that or tracking that down.

5 Q. Any idea if Mr. Burchfield
6 is responsible for any of the other
7 containers on the list?

8 A. Not unless it was noted.
9 The only thing we know is clearly
10 somebody did not return this to
11 Mr. Burchfield.

12 Q. Fair enough. Let me switch
13 gears a little bit. You talked about, if
14 we think about the second section of that
15 list, that's the section that was sourced
16 from today's museum.

17 And you, I believe,
18 testified that you were part of the group
19 or you were responsible for finding those
20 and then actually putting them down in
21 packages to ship off to the lab; is that
22 correct?

23 A. That is correct.

24 Q. Now, as to the first

1 section, the section that we spent more
2 time, the stuff that came from marketing
3 and offsite storage, I believe you
4 testified that you didn't know who
5 exactly put that into boxes and sent that
6 off; is that correct?

7 A. That's correct.

8 Q. But do you have an
9 understanding of what group of people
10 were responsible to do that once they
11 were found?

12 A. Yes, it would have been some
13 combination of the legal folks, the
14 records management folks, and the folks
15 that worked at the consumer company.

16 Q. So was it the same group of
17 people who worked with you on your
18 section of the bottles?

19 A. Presumably some of them
20 would probably have been the same.

21 Q. Okay. And then the last
22 question I have for you is, can we go
23 back to the very last picture that we
24 looked at. It was the one that was

1 attached to the double pack. And we were
2 trying to figure out maybe if we could
3 understand which sample that was.

4 MS. FOURNIER: What was the
5 exhibit number? Does anybody have
6 that? 75? Okay. Thank you.

7 MR. LAPINSKI: I think it
8 was 61.

9 MS. FOURNIER: Oh, Exhibit
10 61. Thank you.

11 THE WITNESS: This is
12 Exhibit 61, the one that had that
13 anomalous --

14 BY MS. FOURNIER:

15 Q. That's right.

16 A. Yeah.

17 Q. And we just went through on
18 this exhibit listing and found that it
19 potentially matches to JBP-016, right?
20 Is that correct?

21 A. Potentially it could match
22 to that, yes.

23 Q. Okay. I'd like you to take
24 a look at the entry for JBP-223. And let

1 me know whether you think that it could
2 potentially match that entry as well?

3 MR. LAPINSKI: Did you say
4 JBP-223?

5 MS. FOURNIER: 223. I'm
6 looking at Page 11880, Page ID.
7 Page 33 of 91.

8 THE WITNESS: JBP-223?

9 BY MS. FOURNIER:

10 Q. That's correct.

11 A. That does say it is -- it is
12 a cardboard cylinder from the right time.
13 I think the volume is different though.

14 Q. Okay. Are there other
15 cardboard cylinder samples on this list?

16 A. Yes. I believe there are.

17 Q. And do you know with
18 certainty if that one is 016?

19 A. We cannot determine with
20 certainty which one that is. I would
21 have to look and see what the sizes were,
22 if there's another cardboard cylinder
23 that was one and three-quarters ounces.
24 We would not be able to tell which one is

1 which.

2 MS. FOURNIER: Got it.

3 Those are all my questions.

4 THE VIDEOGRAPHER: The time
5 is --

6 MR. LAPINSKI: Two
7 questions, so let's go off for
8 now.

9 THE VIDEOGRAPHER: The time
10 is 5:54 p.m. We're off the
11 record.

12 (Brief pause.)

13 THE VIDEOGRAPHER: Back on
14 the record at 5:55 p.m.

15 - - -

16 EXAMINATION

17 - - -

18 BY MR. LAPINSKI:

19 Q. Ms. Gurowitz if you can
20 refer to Exhibit 78?

21 A. I'll just need a moment to
22 find it.

23 Q. We're going to look at 78
24 and 79, which were the last two given to

1 you by counsel.

2 A. Yes. Okay.

3 Q. Exhibit 78 you said was
4 photographs of a sample that was donated
5 to Johnson & Johnson, correct?

6 A. Correct.

7 Q. And if you look at the color
8 photo on Page 2, I believe it says --
9 what we can see is, "Photo taken from,"
10 and then it has a July date, correct?

11 A. Correct.

12 Q. And would you agree that
13 someone within Johnson & Johnson took
14 steps to label this product that had been
15 donated to Johnson & Johnson?

16 A. No, I would not agree.
17 Somebody labeled it. But we don't know
18 if it was a Johnson & Johnson person or
19 the person who donated it.

20 Q. But it's a donated -- as a
21 donated product, it's labeled as such,
22 correct?

23 A. It is labeled, but we don't
24 know who labeled it.

1 Q. As far as -- if you would go
2 to Exhibit 79. And Exhibit 79 is a
3 sample that came from Mr. Burchfield's
4 cabinet, correct?

5 A. Correct.

6 Q. And someone did label this
7 as a sample that came from an outside
8 source, correct?

9 A. Correct.

10 Q. In regard to Exhibit 49,
11 which was one that you should have it
12 on -- pretty close to the top because we
13 just talked about it.

14 Okay. You testified that
15 you had not examined or handled any of
16 the offsite -- any of the offsite
17 samples, correct?

18 A. Correct.

19 Q. So you haven't examined
20 Exhibit Number 49, correct?

21 A. Not in person, no.

22 Q. So your testimony about the
23 top possibly being off is based only on
24 the photograph and is speculation

1 otherwise?

2 A. It is based on the
3 photograph and the fact that there's a
4 gap here and it looks like it -- it looks
5 like it was -- there's more space here
6 than there is on the other side. So it's
7 based on that.

8 Q. And the top of that is a
9 removable top, correct?

10 A. If you are referring to this
11 entire top, yes. You can pull that off.

12 Q. Okay. And there became a
13 point in time where Johnson & Johnson
14 changed the design of their Baby Powder
15 bottles so that the top was no longer
16 removable, correct?

17 A. Well, initially the oldest
18 samples did not have this type of top.
19 Then for a number of decades they had
20 this type of top, and then they moved
21 away from it.

22 Q. And when did they move away
23 from that?

24 A. I believe this was moved

1 away from when they changed to plastic
2 packaging in 1963 time frame.

3 MR. LAPINSKI: Okay. No
4 more questions.

5 THE VIDEOGRAPHER: This
6 concludes today's deposition. The
7 time is 5:58 p.m. We are off the
8 record.

9 (Excused.)

10 (Deposition concluded at
11 approximately 5:58 p.m.)
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CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, MARGARET M. GUROWITZ, have the opportunity to read and sign the deposition transcript.

MICHELLE L. GRAY,
A Registered Professional
Reporter, Certified Shorthand
Reporter, Certified Realtime
Reporter and Notary Public
Dated: July 20, 2018

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

1

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E R R A T A

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4 PAGE LINE CHANGE

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do
hereby certify that I have read the
foregoing pages, 1 - 380, and that the
same is a correct transcription of the
answers given by me to the questions
therein propounded, except for the
corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.

MARGARET M. GUROWITZ DATE

Subscribed and sworn
to before me this
_____ day of _____, 20____.
My commission expires:_____

Notary Public

1	LAWYER'S NOTES		
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Exhibit 162



macrone environmental services, inc.

200 OAKBROOK BUSINESS CENTER
5500 OAKBROOK PARKWAY
NORCROSS, GA 30093 • 404-449-8461

RECEIVED

FEB 2 1987

W. M. I.

28 January 19876

Windsor Minerals, Inc.
P. O. Box 680
Windsor, Vermont 05089

Attention: Mr. Roger N. Miller, President

Re: McCrone Project No. ME-3241

Dear Mr. Miller:

Under your Purchase Order QC-0548, we received nineteen talc samples for asbestos analysis by transmission electron microscopy. The samples were labelled as follows:

WMI 86-10	WMI 86-14	WMI 86-18	WMI 86-22	WMI 86-26
WMI 86-11	WMI 86-15	WMI 86-19	WMI 86-23	WMI 86-27
WMI 86-12	WMI 86-16	WMI 86-20	WMI 86-24	WMI 86-32
WMI 86-13	WMI 86-17	WMI 86-21	WMI 86-25	

Examination found no quantifiable amounts of asbestiform minerals. The limit of detection for each sample is below 0.001 weight percent.

Thank you for consulting McCrone Environmental Services, Inc.

Sincerely,

Thomas Kremer
Thomas Kremer

Electron Microscopist

James R. Millette

James R. Millette, Ph.D.
Manager, Laboratory Services

TK/JRM/mtw

cc: 1) Windsor Minerals, Inc.
Windsor VT
1) Mr. Roger N. Miller, President

EXHIBIT
J&J-355

a subsidiary of walter c. mcCrone associates, inc.
2820 SOUTH MICHIGAN AVENUE • CHICAGO, ILLINOIS 60616 • 312-842-7100



mccrone environmental services, inc.

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W. M. I.

PLEASE NOTE

It is our present policy to hold samples for 30 days after issuance of the analysis report at no additional charge to the client. At the end of the 30 day period, samples will be disposed of unless a written request to return has been received in our office. A sample return fee in the amount of U.S. certified postage plus 15% will be charged for each group of samples mailed. McCrone Environmental Services, Inc. will archive samples upon receipt of written notification from the client at a charge of \$ 0.50 per sample per month. Special arrangements will be made for samples received under specific "chain of custody" orders. Please contact our office if special handling is needed for your samples.

Sincerely,

James R. Millette, Ph.D.
Manager, Laboratory Operations

a subsidiary of walter c. mccrone associates, inc.

2820 SOUTH MICHIGAN AVENUE • CHICAGO, ILLINOIS 60616 • 312-842-7100

WINDSOR MINERALS, INC.

Samples to McCrone Environmental Services

October 13, 1986

West Windsor

Float Feed	April, 1986	WMI 86-10
Float Feed	May, 1986	WMI 86-11
Float Feed	June, 1986	WMI 86-12
Float Feed	July, 1986	WMI 86-13
Float Feed	August, 1986	WMI 86-14
Float Feed	September, 1986	WMI 86-15

Columbia

Grade 36	April, 1986	WMI 86-16
Grade 36	May, 1986	WMI 86-17
Grade 36	June, 1986	WMI 86-18
Grade 36	July, 1986	WMI 86-19
Grade 36	August, 1986	WMI 86-20
Grade 36	September, 1986	WMI 86-21

Columbia

Alpha Beta Product	April, 1986	WMI 86-22
Alpha Beta Product	May, 1986	WMI 86-23
Alpha Beta Product	June, 1986	WMI 86-24
Alpha Beta Product	July, 1986	WMI 86-25
Alpha Beta Product	August, 1986	WMI 86-26
Alpha Beta Product	September, 1986	WMI 86-27

Other

66 product from Rainbow test run, September 26, 1986	WMI 86-31
--	-----------

Cheryl Hill-Bennett
CC: Roger Miller
Robert Goff

Exhibit 163

Memo

To: William Ashton
cc: Regina Gallagher, Lorena Telofski, Mike Chudkowski
From: Joyce Payeur
Date: 10/20/00
Re: TALC CLOSET CLEANOUT & STORAGE

I was requested by Research Support Sciences to remove all powder items from the storage closet in Research North, second floor. The majority of items were from previous world talc surveys and Chinese competitor brands. These items were discarded today as standard chemical waste through Skillman Environmental Affairs.

I have relabeled and repackaged the following items for long-term storage in the Research North Sub-Basement Room, first corridor:

Historical Talc from Kilmer Museum - 1 Box
Asbestiform Mineral samples and purchased standards - 1 Box
Tremolite & Carbonate 95%- 1 Kilo Poly Jar
NY State Tremolite labeled XRD Std - 1 gallon paint can
Card File with Mine Locations and Photomicrographs of Talc

Please be aware of their presence and location.


Joyce Payeur - Technical Assurance

Technical Assurance

11

**EXHIBIT
J&J-800**

Protective Order

JNJNL61_000015761

Exhibit 164

From: McCarthy, Timothy [CPCUS]
Sent: Friday, November 21, 2008 1:55 PM
To: Bernhofer, Lauren [CPCUS]
Subject: RE: Baby Powder

Monica Popescu has been running these surveys since I've been here.
unless you have run anything recently, I am guessing your surveys are out of date. ergo,
PITCH them.

thanks

-----Original Message-----

From: Bernhofer, Lauren [CPCUS]
Sent: Friday, November 21, 2008 8:52 AM
To: McCarthy, Timothy [CPCUS]
Subject: RE: Baby Powder

Tim,

Do you have an idea of what the retention time would be on information related to the
CTFA ingredient surveys we have responded to over the past few years? I can show you if you
come over to see the Talc files.

Thanks,
Lauren

-----Original Message-----

From: McCarthy, Timothy [CPCUS]
Sent: Friday, November 21, 2008 8:46 AM
To: Bernhofer, Lauren [CPCUS]
Subject: RE: Baby Powder

great reading!
I may take a walk up north to familiarize myself with the talc goodies you have.

thanks

-----Original Message-----

From: Bernhofer, Lauren [CPCUS]
Sent: Friday, November 21, 2008 8:41 AM
To: McCarthy, Timothy [CPCUS]; Casalvieri, Joan [CPCUS]
Subject: RE: Baby Powder

Hi Tim,

I don't think you would want to share this document, but FYI, I thought
you would find it interesting. Not exactly hundreds of years old, but close to it. Dr. Lord
was the Director of the Research Foundation when I first came to J&J, but retired shortly
after. He just passed away this last year at a very respectable old age!

More seriously, we have about 4 file drawers of info on Talc over here.

Lauren

<< File: Talc_1978.pdf >>

-----Original Message-----

From: McCarthy, Timothy [CPCUS]
Sent: Friday, November 21, 2008 8:15 AM
To: Bernhofer, Lauren [CPCUS]; Casaltvieri, Joan [CPCUS]
Subject: FW: Baby Powder

I can surmise that any tox studies conducted on J Baby Powder precede even Lauren's tenure by several thousands of years.

best I could probably cough up would be a literature review on talc plus an IFRA compliance statement.

any better ideas?

-----Original Message-----

From: Clayton, Tom [MEDGB]
Sent: Friday, November 21, 2008 7:47 AM
To: McCarthy, Timothy [CPCUS]; Auld, Karen [CPCUS Non J&J]
Cc: Bernhofer, Lauren [CPCUS]; Casaltvieri, Joan [CPCUS]
Subject: RE: Baby Powder

Hi Tim,

Thanks for the info. I am after the toxicological / biocompatibility data for the J&J Baby powder in order for our product safety officer to say that it is ok for us to use this as a processing aid. The only reason why we need this information, is that the processes that it will be used on, it will be in direct contact with our devices that, in turn, come into contact with skin / open lesions etc..

Do you have this information available? I presume that the powder has had this data compiled during development?

Thanks,
Tom.

-----Original Message-----

From: McCarthy, Timothy [CPCUS]
Sent: 19 November 2008 17:11
To: Auld, Karen [CPCUS Non J&J]; Clayton, Tom [MEDGB]
Cc: Bernhofer, Lauren [CPCUS]; Casaltvieri, Joan [CPCUS]
Subject: FW: Baby Powder

Tom/Karen: Johnson's Baby Powder is a cosmetic product, not a device or OTC drug.

Although we use talc, USP in our North America manufacture of J Baby Powder, it contains a small amount (< 0.5%) fragrance, itself a complex blend of chemicals. I am uncertain how fragrance components may impact your process.

J&J Consumer has a very good relationship with our vendor of talc (Rio Tinto, formerly known as Luzenac). Would it be better to go right to our source of talc, USP?

It just so happens that I have a meeting this afternoon on-site with the Regulatory Affairs Manager from Rio-Tinto to discuss some talc issues.

if you want to go right to R-T on this:
Mark Zamek, Sr Key Account Manager, Rio-Tinto Minerals, 610 530-7850
(cell: 908 334-0850); mark.zamek@riotinto.com
Kent Cutler, VP Sales, 303 713-5500; kent.cutler@riotinto.com

please get back to us, if this is not helpful

Tim

908 874-1232

-----Original Message-----
From: Bernhofer, Lauren [CPCUS]
Sent: Tuesday, November 18, 2008 10:05 AM
To: Clayton, Tom [MEDGB]
Cc: McCarthy, Timothy [CPCUS]
Subject: FW: Baby Powder

Hi Tom,

I am forwarding you question to Tim McCarthy, who is our Toxicologist responsible for baby powder support. He is probably the best person to help you.

Tim - Please see Toms question at the bottom of this email string, regarding the proposed use of J&J Baby Powder in manufacturing of wound care products.

Best Regards,
Lauren

-----Original Message-----
From: Clayton, Tom [MEDGB]
Sent: Tuesday, November 18, 2008 9:34 AM
To: Bernhofer, Lauren [CPCUS]
Subject: FW: Baby Powder

Hi Lauren,
I have been given your name as a possible contact for the information I requested below. Please would you be able to help?

Kind regards,
Tom.

Tom Clayton
Quality Engineer
Johnson & Johnson Wound Management
Airebank Mill, Gargrave, North Yorkshire, BD23 3RX
Tel: +44 (0) 1756 747249
Fax: +44 (0) 1756 748403

<mailto:tclayto1@its.jnj.com>

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Johnson & Johnson Medical Limited, Po Box 1988, Kirkton Campus,
Livingston, West Lothian, EH54 0AB. Registered in Scotland, No SC 132162

P Before printing this message, make sure that it's necessary.

-----Original Message-----

From: Auld, Karen [CPCUS Non J&J]
Sent: 18 November 2008 14:32
To: Clayton, Tom [MEDGB]
Subject: RE: Baby Powder

Tom,

I don't have access to that type of information.

I would recommend you try Lauren Bernhofer. See works in toxicology and may be able to provide you with the information you need.

Hope this helps.

Karen

-----Original Message-----

From: Clayton, Tom [MEDGB]
Sent: Tuesday, November 18, 2008 9:25 AM
To: Auld, Karen [CPCUS Non J&J]
Subject: RE: Baby Powder

Hi Karen,

Our Product Safety Officer has asked if you can provide biocompatibility data including cytotoxic data, and clinical studies for the talc baby powder?

This information, if available, would be of great use when completing the product safety approval request.

Thanks in advance,
Tom.

-----Original Message-----

From: Auld, Karen [CPCUS Non J&J]
Sent: 14 November 2008 18:14
To: Clayton, Tom [MEDGB]
Cc: Carbonetta, Lou [CPCUS]
Subject: RE: Baby Powder

Tom,

Attached are North American MSDSs. Not sure if you needed talc or corn starch so I attached both.

Hope this helps.

Karen Auld
EHS Consultant

<< File: MSDS Baby Powder Cornstarch.pdf >> << File: MSDS
Baby Powder Talc.pdf >>

-----Original Message-----
From: Carbonetta, Lou [CPCUS]
Sent: Friday, November 14, 2008 1:07 PM
To: Clayton, Tom [MEDGB]
Cc: Auld, Karen [CPCUS Non J&J]
Subject: RE: Baby Powder

Tom,

I was given the name Karen Auld. Try her. She is on the
e-mail system. Let me know the results of your search.

Lou

-----Original Message-----
From: Clayton, Tom [MEDGB]
Sent: Friday, November 14, 2008 3:17 AM
To: Carbonetta, Lou [CPCUS]
Subject: RE: Baby Powder

Thanks Lou,
I appreciate your help.
Tom.

-----Original Message-----
From: Carbonetta, Lou [CPCUS]
Sent: 13 November 2008 22:48
To: Clayton, Tom [MEDGB]
Subject: RE: Baby Powder

I will look into it.

Lou

-----Original Message-----
From: Clayton, Tom [MEDGB]
Sent: Thursday, November 13, 2008 11:05 AM
To: Carbonetta, Lou [CPCUS]
Cc: Whaites, Adam [MEDGB]; Lewis, Joanne [MEDGB]
Subject: Baby Powder

Hi Lou,
I'm hoping you can help me with something totally unrelated to
UltraHeal!

We are currently using BIOSORB* powder on one of our machines
as a processing aid, and the supply of this is becoming very sparse. The operators are
wanting to use Johnson's Baby Powder as a replacement, but I would like to get a health
hazard assessment on the powder before saying yes.

As you are the only person I know in the Consumer group, I am wondering if you know anybody who would be able to provide an MSDS or data sheet relating to J&J baby powder? I'll then be able to use this as a starting block to formulating a risk assessment.

Thanks in advance,
Tom.

Tom Clayton
Quality Engineer
Johnson & Johnson Wound Management
Airebank Mill, Gargrave, North Yorkshire, BD23 3RX
Tel: +44 (0) 1756 747249
Fax: +44 (0) 1756 748403

<mailto:tclayto1@its.jnj.com>

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JNJ000368489

Metadata

AttachCount	0	ORIGINAL
BegAttach	JNJ 000368489	ORIGINAL
Confidentiality	N	ORIGINAL
Custodian	McCarthy, Timothy	ORIGINAL
DateCreated	01/09/2010 12:00 AM	ORIGINAL
DateMod	11/21/2008 12:00 AM	ORIGINAL
EndAttach	JNJ 000368494	ORIGINAL
FileName	RE: Baby Powder	ORIGINAL
FileSize	68096.00	ORIGINAL
PgCount	6	ORIGINAL

Exhibit 165



McCrone Environmental Services, Inc.
1412 OAKBROOK DRIVE • SUITE 100
NORCROSS, GA 30093 • 404-368-9600

FILE COPY

26 November 1990

Mr. Michael J. Keener
Quality Control Manager
Cyprus Windsor Minerals Corporation
P.O. Box 680
Windsor, Vermont 05089

Dear Mr. Keener:

Under your letter of authorization dated 02 November 1990, we received three (3) talc samples for asbestos analysis by transmission electron microscopy. The samples were labelled as follows:

CVM 90-28
CVM 90-29
CVM 90-30

Examination found no quantifiable amounts of asbestiform minerals. Thank you for consulting McCrone Environmental Services, Inc.

Sincerely,

E. Kent Sprague
Electron Microscopist

EKS:ljf
ME-7882

a member of **the mccrone group**

850 PASQUINELLI DRIVE • WESTMONT, ILLINOIS 60559 • 708-887-7100

PLAINTIFF'S
TRIAL EXHIBIT
2035

Quet#
911453

ME-7882
MA90009

CYPRUS WINDSOR MINERALS CORP.
P.O.BOX 680
WINDSOR, VERMONT 05089
TELEPHONE (802) 484-7763

Mr. James R. Millette, Ph.D.
Electron Optics Group
McCrone Environmental Services, Inc.
1412 Oakbrook Dr. #100
Norcross, GA 30093 - 2243

November 2, 1990

Dear Mr. Millette:

We are sending the next series of three samples for
asbestiform analysis via transmission electron microscopy.
The samples are designated per attached list.

You may charge this work to our Purchase Order QC26388W.

Please send the results to Michael J. Keener, Quality
Control Manager, Eastern Operations, Cyprus Windsor Minerals.

Thank You

Sincerely,

Joan R. Johnson
Joan R. Johnson

Quality Assurance Lab Supervisor

Jrj
Enclosure

J&J-0007795

CYPRUS WINDSOR MINERALS CORPORATION
SAMPLES TO MCCRONE ENVIRONMENTAL SERVICES
NOVEMBER 1990

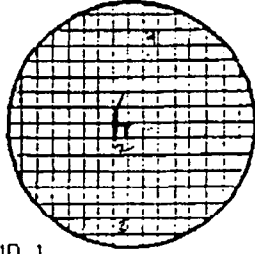
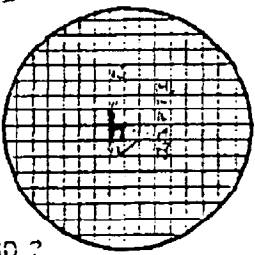
CWM 90 - 28

CWM 90 - 29

CWM 90 - 30

J&J-0007796

EPA LEVEL II TEM ANALYSIS

ME # <u>90009-1</u> McCrone ID# _____		
PROJECT <u>CYPRESS WINDSOR</u>		
CLIENT ID <u>CWN 90-28</u>		
CLIENT _____		
COMMENTS _____		GRID 1
VOLUME/AREA SAMPLED _____		
DATE ANALYZED <u>11/19/90</u>		GRID 2
PRIORITY _____		
SAMPLE TYPE		GRID MAPS
<input type="checkbox"/> RUSH <input type="checkbox"/> EPA II AIR <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> DUST (BY AREA) cm^2 LOADING <input type="checkbox"/> DUST (BY WT) mg <input type="checkbox"/> LIGHT <input type="checkbox"/> WATER <input checked="" type="checkbox"/> MEDIUM <input checked="" type="checkbox"/> TALC <input type="checkbox"/> HEAVY <input type="checkbox"/> LUNG TISSUE <input type="checkbox"/> OTHER		
ANALYST <u>RR</u>		
CAL MAG <u>20,520</u> \times <u>5,100x</u>		
# SQUARES COUNTED <u>20</u>		
TOTAL STRUCTURES COUNTED <u>1</u>		
DATA ENTRY BY _____		
DISC # _____		
NOTES <u>FIBERS measured @ 20,520</u>		
Scope <u>400</u> Acc. Volt <u>20</u> kV		

OBS	G/S	STRUCT	TYPE	LENGTH	WIDTH	# FIBERS	REP LENGTH	REP WIDTH	SAED	EDS	NOTES
51											20,540
52											
53											
54											5,400
55											
56				20.0	1.5						ANTHONY 11/12
57											
58											
59											
60											
511											20,540
512											5,400
513											
514											
515											
516											
517											
518											
519											
520											

McCrone Environmental Services, Inc.

J&J-0007797

JNJMX68_000012854

QUALITATIVE ELEMENT IDENTIFICATION

SAMPLE ID:MA90009-1 ANTHOPHYLLITE

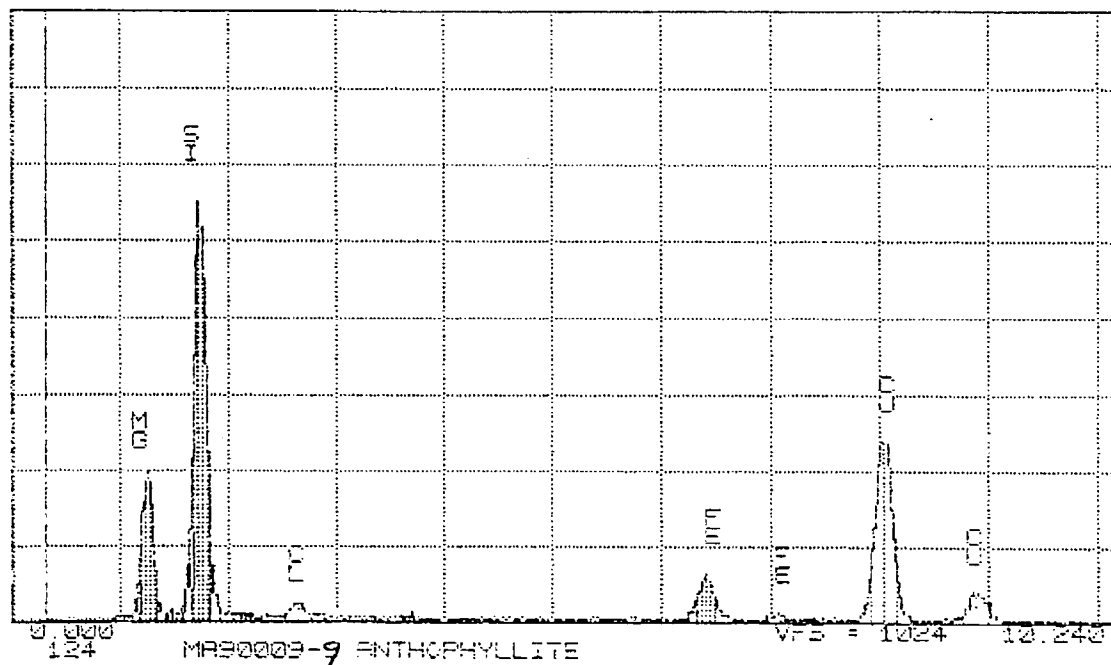
POSSIBLE IDENTIFICATION

SI KA OR RB LA?
CU KA KB
MG KA OR AS LA?
FE KA KB
CL KA

PEAK LISTING

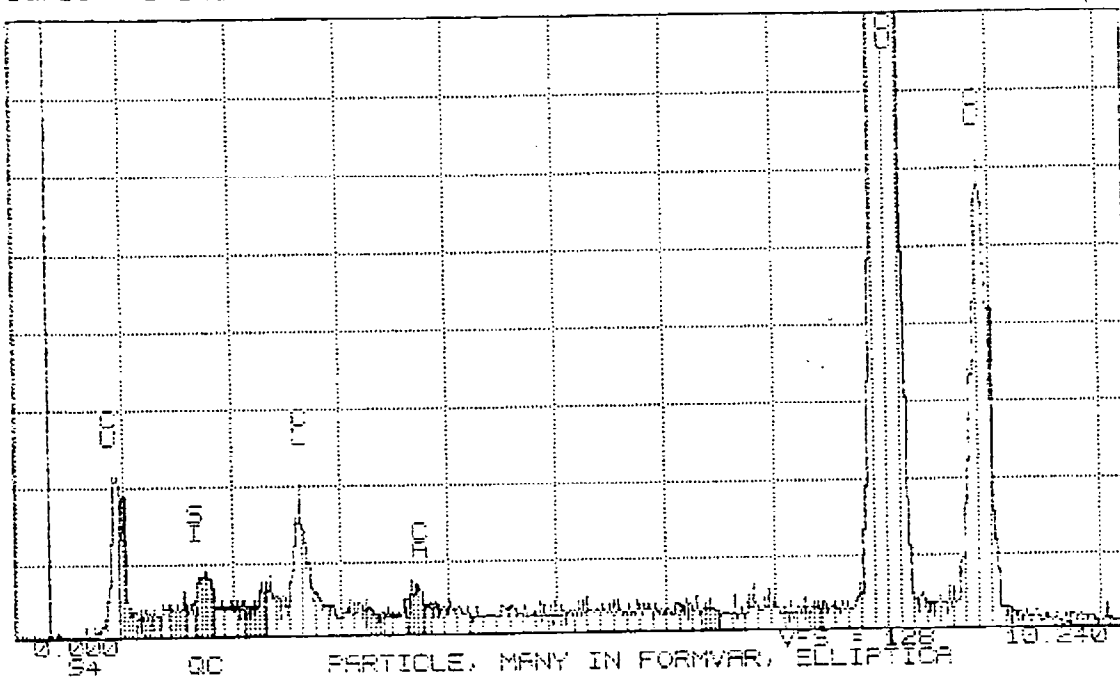
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1	1.254	3416	MG KA OR AS LA?
2	1.739	10078	SI KA OR RB LA?
3	2.627	320	CL KA
4	6.400	1153	FE KA
5	7.057	188	FE KB
6	8.037	5079	CU KA
7	8.894	774	CU KB

McDermott Environmental Services Inc. MON 19-NOV-20 12:13
Cursor: 2.300keV = 0 ROI (SiKa) 1.670: 1.812=7518



J&J-0007798

McDermott Environmental Services Inc. MON: 19-NOV-90 09:09
Cursor: 2.300KeV = 0 201 (SiK α) 1.670: 1.812=171



J&J-0007799

QUALITATIVE ELEMENT IDENTIFICATION

SAMPLE ID: MAS0009-1

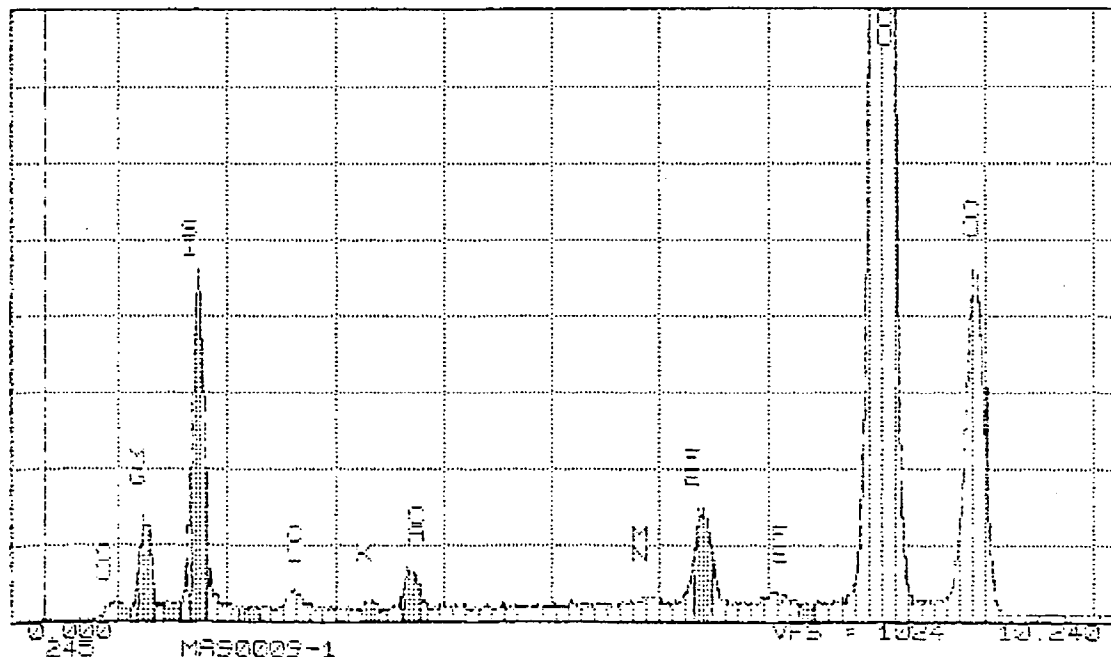
POSSIBLE IDENTIFICATION

CU KA KB LA
SI KA OR RS LA?
FE KA KB
MG KA OR AS LA?
CA KA
CL KA
MN KA
K KA OR IN LA?

PEAK LISTING

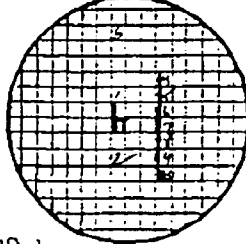
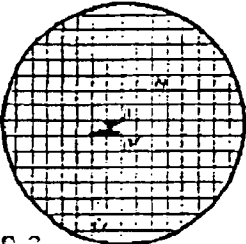
	ENERGY	AREA	EL. AND LINE
1	0.941	261	CU LA
2	1.255	2260	MG KA OR AS LA?
3	1.739	8078	SI KA OR RS LA?
4	2.615	474	CL KA
5	3.317	217	K KA OR IN LA?
6	3.696	1009	CA KA
7	5.907	236	MN KA
8	6.396	2560	FE KA
9	7.042	329	FE KB
10	8.038	64354	CU KA
11	8.893	9058	CU KB

McDermott Environmental Services Inc. MON 19-NOV-20 11:56
Cursor: 0.300keV = 0 ROI (SIKa) 1.670: 1.810=6239



J&J-0007800

EPA LEVEL II TEM ANALYSIS

ME # <u>90009-2</u> McCrone ID# _____		 <p>GRID 1</p>  <p>GRID 2</p> <p>GRID MAPS</p>
PROJECT <u>CYPHUS WINDSOR</u>		
CLIENT ID <u>CWM 90-29</u>		
CLIENT COMMENTS _____		
VOLUME/AREA SAMPLED _____	DATE ANALYZED <u>11/20/90</u>	<p>GRID 1</p> <p>GRID 2</p> <p>GRID MAPS</p>
FILTER AREA (mm ²) <u>7.07</u>	PRIORITY	
AVG GRID SQ AREA (SGum) _____	RUSH <input type="checkbox"/>	
ANALYST <u>RL</u>	REGULAR <input checked="" type="checkbox"/>	
CAL MAG <u>2,520 - 5,400 X</u>	LOADING	
# SQUARES COUNTED <u>20</u>	LIGHT <input type="checkbox"/>	
TOTAL STRUCTURES COUNTED _____	MEDIUM <input checked="" type="checkbox"/>	
DATA ENTRY BY _____	HEAVY <input type="checkbox"/>	
DISC # _____	PLATE # _____	<input type="checkbox"/> EPA II AIR <input type="checkbox"/> DUST (BY AREA) cm ² <input type="checkbox"/> DUST (BY WT) mg <input type="checkbox"/> WATER <input checked="" type="checkbox"/> TALC <input type="checkbox"/> LUNG TISSUE <input type="checkbox"/> OTHER
NOTES <u>Amberite</u>		
Scope <u>9001</u> Acc. Volt <u>20</u> kV		

OBS	G/S	STRUCT	TYPE	LENGTH	WIDTH	# FIBERS	REP LENGTH	REP WIDTH	SAED EDS	NOTES
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52										
53										
54										
55										
56										
57										
58										
59										
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511										
512										
513										
514										
515										
516										
517										
518										
519										

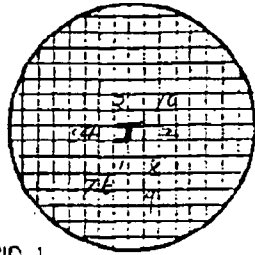
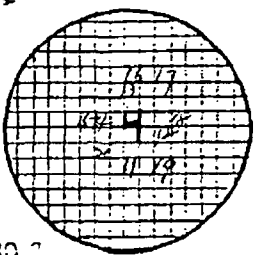
20,520
5,400
2,520

McCrone Environmental Services, Inc.

J&J-0007801

JNJMX68_000012858

EPA LEVEL II TEM ANALYSIS

ME # <u>90009-3</u> McCrone ID# _____		
PROJECT _____		
CLIENT ID <u>Cum 90-30</u>		
CLIENT _____		
COMMENTS _____		GRID 1
VOLUME/AREA SAMPLED _____		
DATE ANALYZED <u>1/19/90</u>		GRID 2
PRIORITY _____		
SAMPLE TYPE		GRID MAPS
<input type="checkbox"/> RUSH <input type="checkbox"/> EPA II AIR <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> DUST (BY AREA) <u>cm²</u> LOADING <input type="checkbox"/> DUST (BY WT) <u>mg</u>		
ANALYST <u>JH</u>		
CAL MAG <u>19,440x</u> <u>5,962x</u>		
# SQUARES COUNTED _____		
TOTAL STRUCTURES COUNTED <u>1</u>		
DATA ENTRY BY _____		
DISC # _____		
NOTES		
Scope <u>1200EX</u> Acc. Volt <u>120</u> kV		

OBS	G/S	STRUCT	TYPE	LENGTH	WIDTH	FIBERS	REP	REP	SAED	EDS	NOTES
515											
52											
53	F	C		1.0	0.15						20,000x
54											
55											
56											
57											6,000x
58											
59											
510											
511											
512											20,000x
513											
514											
515											
516											6,000x
517											
518											
519											
520											

McCrone Environmental Services, Inc.

J&J-0007802

JNJMX68_000012859

QUALITATIVE ELEMENT IDENTIFICATION

SAMPLE ID:90009-3 CHRYSOTILE FIBER

POSSIBLE IDENTIFICATION

CU KA KB

SI KA OR SR LA?

PEAK LISTING

	ENERGY	AREA	EL. AND LINE
1	1.750	130	SI KA OR SR LA?
2	8.053	12306	CU KA
3	8.921	1756	CU KB

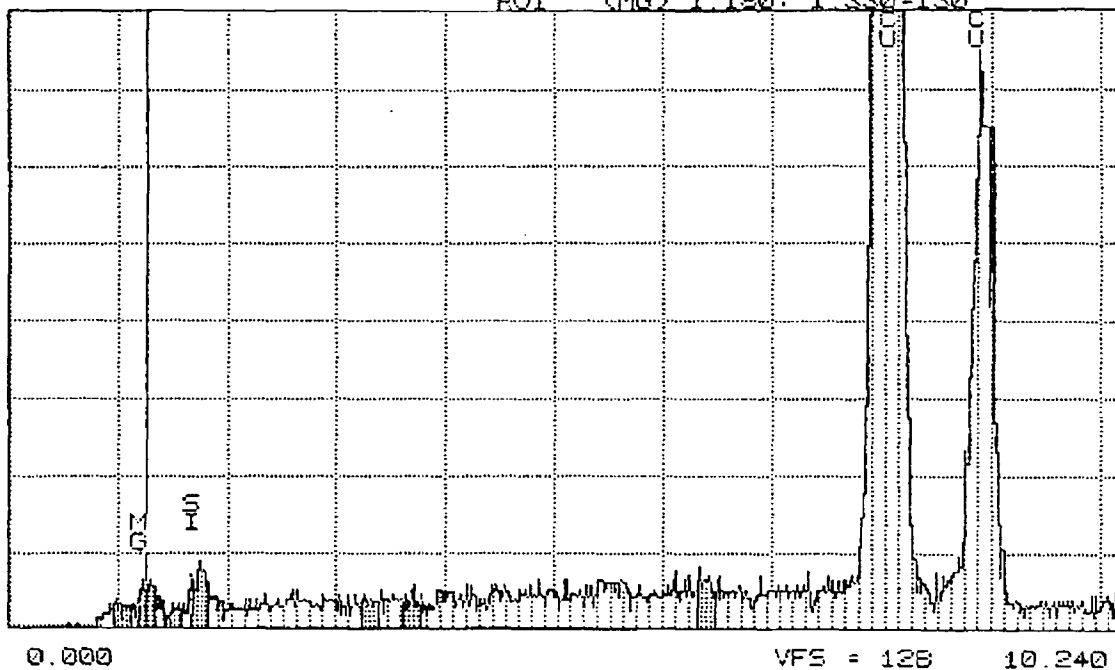
McCRONE ENVIRONMENTAL - JEOL 1200EX

MON 19-NOV-90 12:14

Cursor: 1.270keV = 10

ROI (SI) 1.670: 1.810=154

ROI (MG) 1.180: 1.330=130



58 90009-3 CHRYSOTILE FIBER

J&J-0007803

Exhibit 166



DATE: November 23, 1993

TO: W. Ashton, D. Jones

FROM: R. Denton

SUBJECT: TRIP REPORT
TALC VALIDATION TEAM MEETING - NOVEMBER 16, 1993
WINDSOR, VERMONT

TUESDAY MORNING MEETING HIGHLIGHTS:

- Flocculant was removed from the process as of 9/28/93 (i.e., just subsequent to farmhouse meeting).
- Luzenac will return to the exclusive use of "conventional" (i.e., horizontal) flotation cells.
- Luzenac has begun investigating possible alternative methods of particle size analysis (e.g., a "dry" coulter counter, etc.), but will continue to utilize the Micromeritics Corporation's "sedigraph" instrument. They have accumulated a large body of data on their talc with this device, and it is one of the most generally accepted methods for mineral particle size analysis in the 0.5 to 50 micron size range. It is also an accepted technique within the talc and mica industries. We expressed concern that the sedigraph, which analyzes samples as an aqueous dispersion, may not give data reflecting the respirable particle distribution. We also brought up the possibility of using an aerodynamic technique (e.g., Aerosizer).
- Luzenac has produced "high, loose bulk density" talc powder by minimal passage of material through the air classifier, thereby increasing the loose bulk density from 25.5 to approx. 27.0 lbs/cu ft..
- Luzenac is placing considerable emphasis on our acceptance of the V-96 special material (< 3.0% acid solubles). We have promised to continue reviewing the data, but expressed great caution in any hasty judgement as to the acceptability of the V-96 grade.
- Randy Corder gave a brief review of the effort to reduce microbial contamination of the talc. Prior to 1986, he mentioned that a large number of talc shipments were rejected due to contamination (spec. is ≤ 100 c.f.u.'s/gram and no harmfuls in 0.1 gram). After chlorination of the dewatering tank was begun (1986), there have been no rejections based on microbial content. However, due to technical problems with the chlorination (i.e., pH control, destruction of equipment due to corrosive HCl vapor, etc.) there continues to be emphasis on the acceptance of a brominating agent for microbial control. However Luzenac will keep the process as it currently is being run.

-2-

- In order to create a "benchmark" talc for our characterization and specification work, we agreed that there will be a "moratorium" on any further process changes, to avoid chasing a "moving target" on particle size, odor changes, density, etc..

Here is a summary of major ore reduction/purification ("front-end") processing changes over the past 16 years.

Pre-1976

Crusher----Roller Mill---Delaminator----Flotation*-----Dewatering-----Finishing

1976-1991

Crusher----Roller Mill---Shear Disc-----Flotation*-----Dewatering-----Finishing

1991-1993

Crusher----Roller Mill---Shear Disc-----Flotation-----Dewatering-----Vertical Mill-----Fin.

1993 to present

Crusher----Roller Mill---Shear Disc---Flotation*---Dewatering-----Air Classifier Mill---Fin.

Planned Changes (1994 Onward)

Crusher----Roller Mill-----Flotation*---Dewatering-----Air Classifier Mill---Fin.

(* indicates use of "conventional" flotation cells.)

- We will be provided with samples of the processing stream from immediately before and after the shear disc. Johnson & Johnson (Bob Denton) will analyze these samples for any changes in morphology, surface area, surface energy, and especially delamination or edge rounding. Until this analysis is carried out and the results evaluated, the shear disc will not be removed from the process stream.

PLANT AND MINE TOUR:

Ore Typology:

- High Grade, "A" Type - Platy, opaque, schist-like fracturing, wavelly banded ore with large talc crystal plates. Often with smoky quartz inclusions occurring as lens shaped pods. Very soft, and easily delaminated (sheets can be separated with a pocket knife or fingernail). Low carbonate level (< 35 percent solubles). Usually occurs at the margins of the ore body (shear zone).
- "B" Type - Fine platy to granular, grainy fracture, semi-translucent ore. Ham material is typically light green with dark magnetite and chlorite inclusions. Contains from 45 percent to 35 percent solubles (moderate carbonate level). Makes up the majority of the commercially useful cosmetic talc ore body at the Ham mine. Harder than high grade ore.

-3-

- "C" Type - Dark colored, translucent, granular ore with a grainy fracture. Ham material is greenish gray with numerous dark inclusions of magnetite and chlorite. High carbonate level (>45 percent soluble material). Highest hardness of all commercially useful cosmetic ores due to high magnesite levels.

PLANT TOUR HIGHLIGHTS: (Conducted by M. Keener)

- Use of too much high grade ore has had a history of producing "slimes" which tended to block up the filters. This was attributed to the fact that the high grade ore delaminated easily into very thin, soft talc plates which tended to yield a large amount of fines during the grinding process. Both the fines and the thin plates contributed to the clogging of the filters and production of excessive foam during flotation.
- Higher carbonate rocks ("B" and "C" type ores) were easier to crush, float, filter, and processed more efficiently in general. Thus, quantities of the "B" and "C" type ore were blended into the high grade material even when Hammondsville was in operation, especially after the advent of continuous mining techniques. However, the exact percentages used in this blending at Hammondsville are currently unknown.
- The Ham production has consisted of primarily "B" grade ore, although as much as 10 to 15 percent of the "A" type ore continues to be mined there. The quantities of "A" ore incorporated into the grind could be even higher, but this facies often contains an unacceptable level of arsenides at this locality.
- All column flotation tanks were removed from process in late 1992. Column flotation was never used exclusively as the material produced by this technique tended to be inconsistent in quality.

MINE TOUR HIGHLIGHTS: (Conducted by Lance Meade)

- Polished thin sections are prepared as part of the prospecting routine to assess crystallinity and mineral types in the bench extensions.
- Hammondsville Mine (open pit/underground - Reading, Vermont) is at the north end of the Chester Dome structural zone. R. Denton collected a sample of a high grade (type A) ore. Lance explained that the underground mining operation was probably* more selective than the current surface mining techniques, and utilized a mixture of primarily high grade and "B" type ore.

*(Note- The specifics of the mining operation at Hammondsville are uncertain, as most of the pre-Luzenac records were destroyed by the mine management staff just prior to the J&J divestiture and the Cyprus purchase. However, several former Hammondsville miners are still employed at the Ham mine, and they provided us with useful information as to the nature of the underground works.)

-4-

- Ham mine (Open pit- Windham, Vermont) is on the western flank of the Chester Dome. Although the ore body exhibits a steeper dip, the basic geological setting is similar to Hammondsville. The ore bodies at both localities are theorized to have originated as serpentinites which were altered by acidic aqueous intrusions to magnesite (magnesium carbonate). Then, the magnesite was partially altered to talc by the intrusion of water-containing dissolved silica into a process known as "steatization". This incomplete steatization gave rise to a biphasic rock containing both talc and magnesite, the so-called "Talc Carbonate".
- The country rock in both locations varies from a phyllosilicate schist (hanging wall) to a garnetiferous gneiss (footwall), with the ore body lying in between. There is an adjacent deposit of serpentine, grading into the magnesite facies, which has been steatized outwards forming the commercially usable talc. At both locations the flaky high grade ore (A type) is a border deposit lying in the shear zones, especially near the contact with the schist (although there are intraformational shear zones as well).

c: **Skillman:**

R. Gallagher
A. Kulkarni
E. Lukenbach
V. McCluskey
J. Molnar
K. Scisorek

Royston:

R. Corder
D.Dye
J. Flaska
M. Roser

JNJ000240739

Metadata

BegAttach	JNJ 000240739	ORIGINAL
Confidentiality	Y	ORIGINAL
Custodian	Legacy 1	ORIGINAL
DocumentType	Physical	ORIGINAL
EndAttach	JNJ 000240742	ORIGINAL
PgCount	4	ORIGINAL
Text Path	TEXT\0236\JNJ 000240739.txt	ORIGINAL
Trial_Ex_Number	Pltf_JNJ_00031594	ORIGINAL

Exhibit 167

Johnson & Johnson

BABY PRODUCTS COMPANY

TO: File

DATE: May 10, 1985

SKILLMAN, N. J. 08558

RE: INGESTIONS AND INHALATIONS - JOHNSON'S BABY POWDER
JANUARY, 1982 - JANUARY, 1985

<u>COMPLAINT #</u>	<u>NAME</u>	<u>DATE RECEIVED</u>	<u>NATURE OF COMPLAINT</u>	<u>MEDICAL ATTENTION RECEIVED</u>	<u>CHILD OR ADULT</u>
--------------------	-------------	--------------------------	--------------------------------	---------------------------------------	---------------------------

02043	Joly	5/4/82	Inhalation	Yes	Adult
-------	------	--------	------------	-----	-------

Pat
Patricia J. Mills

PJM:mmm

cc: M. McTernan

N. Musco

B. Semple

PLAINTIFF'S
TRIAL EXHIBIT
JJ 448

Exhibit 168

George: F.Y.I.

Johnson-Johnson

DOMESTIC OPERATING COMPANY

NEW BRUNSWICK, N. J.

June 10, 1977

Dear Task Force Member:

We are sending to you, under separate cover, Set of coded talc samples for the CTFA round robin retest. It is hoped that through this partial retesting we can achieve our objectives as discussed at our recent meeting.

- A. To verify that CTFA Method J4-1 is accurate and reliable.
- B. To determine whether or not any 1976 production major commercial talc products contain asbestiform amphibole contaminants.

Each set of 4 samples has been selected at RANDOM from:

- 1 standard sample prepared by spiking talc with an amphibole mineral, and
- 3 products which were indicated by several labs. in our initial round robin to have failed the Method.

This means that your set might include any combination of the above four talc samples. Each vial should contain sufficient sample to prepare at least three (3) pellets, if necessary. The smudges on the sides and bottom of each vial are again caused by the masking perfume.

It is imperative that we adhere strictly to the CTFA Method as written if we are to obtain a valid inter-laboratory comparison of results. For this purpose, please:

- 1. In reporting round robin results, consider only those samples showing x-ray diffraction peaks of intensity equal to or greater than that obtained for your own standard talc spiked with 0.5% of the CTFA tremolite.

CTFA Round Robin

-2-

June 10, 1977

2. Substitute Method J4-1, Part II - Tentative Revision (attached) for the Optical Microscopy and Dispersion-Staining Method.
3. Consider an amphibole particle to be a fiber only if it meets the shape, size and aspect ratio criteria of the OSHA Field Memorandum, given in Method J4-1, p. 9. Note: Item 3 of the OSHA fiber definition has been corrected to read:

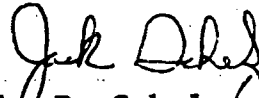
"3. The maximum length of a fiber to be counted is 200 microns."

It may be necessary to accurately measure certain particles to determine if they conform to this fiber definition.

In addition to round robin results, please report to me your results from Method J4-1 (Parts I and II) for those samples showing statistically significant x-ray diffraction amphibole peaks of intensity less than the 0.5% standard.

We have set August 1, 1977 as deadline for receipt of your round robin results. We would also appreciate your comments and suggestions concerning the Part II Tentative Revision. Please contact me (201/524-5518) should you have problems or questions. Thank you for your participation.

Sincerely,



John P. Schelz, Chairman
CTFA Task Force on
Round Robin Testing of
Consumer Talcum Products
Central Analytical Laboratories
Johnson & Johnson Research Center
New Brunswick, N.J. 08903

JPS/gm

cc: Dr. N. F. Estrin
Vice President-Science, CTFA
Mr. G. Sandland
Bristol-Myers Products

RECEIVED

JUN 14 1977

GEORGE LE

Exhibit 169

Johnson & Johnson

George Lee
file Talc Subcommittee
- CTFA

C O N F I D E N T I A L

DOMESTIC OPERATING COMPANY

NEW BRUNSWICK, N. J.

March 1, 1978

Mr. Charles Haynes
The Cosmetic, Toiletry and Fragrance Association, Inc.
1133 15th Street, N.W.
Washington, D.C. 20005

Dear Mr. Haynes:

I am enclosing a table which breaks the code for the recently completed CTFA Task Force on Round Robin Testing of Consumer Talcum Products for Asbestiform Amphibole Minerals. The names, addresses, and phone numbers are also included for those industrial participants whose products were involved.

In accordance with your discussions with Norm Estrin and George Sandland, Chairman CTFA Talc Subcommittee, we would request your assistance in the dissemination of these round robin results as follows:

1. Please contact me (201/524/5518) upon receipt of this letter so that I may destroy the only other copy of this table, which is in my possession.
2. Contact each of the industrial participants to inform them of the round robin results for their product only, as well as the actual lot tested. Please emphasize that no talcum product failed CTFA Method J4-1, Parts I and II; i.e., no product was found to contain asbestiform amphibole at a level equal to or greater than 0.5% by weight. "Nonasbestiform Amphibole Detected" means that the product was found by CTFA Method J4-1 to contain only nonasbestiform amphibole at a level equal to approximately 0.5% or greater.

RECEIVED

MAR 5 1978

GEORGE LEE

-2-

March 1, 1978

3. Destroy your copy of the table.

Your participation in this final important phase of the round robin is appreciated. Thank you very much.

Sincerely,



John P. Schelz, Chairman
CTFA Task Force on
Round Robin Testing of
Consumer Talcum Products

JS/gm
Enclosure

cc (without table): Dr. N. F. Estrin
Vice President-Science, CTFA
Mr. G. Sandland
Bristol-Myers Products

Exhibit 170

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

---OOO---

TERESA ELIZABETH LEAVITT
and DEAN J. MCELROY,
Plaintiffs,

vs.

JOHNSON & JOHNSON, et al.,
Defendants. No. RG17882401

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

---OOO---

PUI FONG and THAI WONG,
Plaintiff,

JCCP CASE NO. 4674

vs.

No. BC675449

JOHNSON & JOHNSON, et al.,
Defendants.

TRIAL PRESERVATION
VIDEOTAPED DEPOSITION OF JAMES PETER MITTENTHAL
(PMQ/COR Johnson & Johnson; Johnson & Johnson
Consumer, Inc.)

VOLUME III, Pages 444 - 602

Taken before EARLY K. LANGLEY, B.A., RMR, RSA, CLR
CSR No. 3537

October 19, 2018

Aiken Welch Court Reporters
One Kaiser Plaza, Suite 250
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www.aikenwelch.com

<p>1 INDEX Page 445</p> <p>2</p> <p>3 PAGE</p> <p>4 JAMES PETER MITTENTHAL 449</p> <p>5 DIRECT EXAMINATION BY MR. SWANSON (Cont'd) 449</p> <p>6 CROSS-EXAMINATION BY MR. COX 586</p> <p>7 REDIRECT EXAMINATION BY MR. SWANSON 592</p> <p>8 RECROSS-EXAMINATION BY MR. COX 599</p> <p>9</p> <p>10</p> <p>11 EXHIBITS</p> <p>12 EXHIBIT NO. PAGE</p> <p>13 Exhibit 38 4/15/69 memo re Alternate 457 Domestic Talc Sources</p> <p>14</p> <p>15 Exhibit 39 Defendant Johnson & Johnson 469 Consumer Inc.'s September 2018 Amended Responses to Plaintiffs'</p> <p>16 LAOSD Standard Interrogatories - Fong case</p> <p>17</p> <p>18 Exhibit 40 USDC District of Rhode Island, 471 deposition of Roger N. Miller, 10/29/82, in the Westfall v Whittaker, Clark & Daniels case</p> <p>19</p> <p>20 Exhibit 41 Superior Court New Jersey, 477 Middlesex County, Gambino v Johnson & Johnson Baby Products Company, Complaint and Demand for Trial by Jury</p> <p>21</p> <p>22 Exhibit 42 8/6/18 letter, K. Frazier, Shook, 483 Hardy & Bacon, to J. Satterley, with attached privilege log</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 DEPOSITION OF JAMES PETER MITTENTHAL Page 447</p> <p>2</p> <p>3 BE IT REMEMBERED, that pursuant to Notice, and</p> <p>4 on October 19, 2018, commencing at the hour of 9:01</p> <p>5 a.m., in the offices of Kazan, McClain, Satterley &</p> <p>6 Greenwood, 55 Harrison Street, Suite 400, Oakland,</p> <p>7 California 94607, before me, EARLY LANGLEY, a Certified</p> <p>8 Shorthand Reporter, State of California, personally</p> <p>9 appeared JAMES PETER MITTENTHAL, produced as a witness</p> <p>10 in said action, and being previously duly sworn, was</p> <p>11 thereupon examined as a witness in said cause.</p> <p>12 --oOo--</p> <p>13 APPEARANCES:</p> <p>14</p> <p>15 For the Plaintiffs:</p> <p>16 MARK SWANSON</p> <p>17 Kazan, McClain, Satterley & Greenwood</p> <p>18 55 Harrison Street, Suite 400</p> <p>19 Oakland, California 94607</p> <p>20 (510) 302-1000</p> <p>21 Mswanson@kazanlaw.com</p> <p>22</p> <p>23 For the Defendants Imerys Talc America, Inc.; Cyprus</p> <p>24 Mines Corporation; Imerys Talc Vermont, Inc.;</p> <p>25 Specially appearing for Defendant Imerys USA, Inc.:</p> <p>KARLEEN MURPHY</p> <p>(Via phone)</p> <p>Dentons US LLP</p> <p>601 S. Figueroa Street, Suite 2500</p> <p>Los Angeles, CA 90017-5704</p> <p>213 623 9300</p> <p>karleen.murphy@dentons.com</p>
<p>1 Exhibit 43 11/23/93 memo, R. Denton to W. 494 Ashton, Trip Report, Talc 2 Validation Team Meeting, 11/16/93 Windsor, Vermont</p> <p>3</p> <p>4 Exhibit 44 10/17/94 letter, Luzenac America 501 letterhead, to J. O'Shaughnessy</p> <p>5 Exhibit 45 Superior Court, San Diego, Selby 504 v Johnson & Johnson, Defendant</p> <p>6 Johnson & Johnson Consumer</p> <p>7 Products, Inc.'s Response to</p> <p>8 Plaintiffs' Requests for</p> <p>Admission</p> <p>9</p> <p>10 Exhibit 46 Superior Court, Alameda County, 531 Leavitt v Johnson & Johnson, Defendant Johnson & Johnson's</p> <p>11 June 11, 2018 Amended Responses</p> <p>12 to Plaintiffs' Requests for</p> <p>13 Production of Documents Set 3</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 For the Defendants Johnson & Johnson; Johnson & Johnson Page 448 Consumer, Inc.:</p> <p>2</p> <p>3 CHRISTOPHER COX</p> <p>4 RICHARD T. BERNARDO (Via phone)</p> <p>5 Skadden Arps, Slate, Meagher & Flom, LLP</p> <p>6 4 Times Square</p> <p>7 New York, New York 10036</p> <p>8 (212) 735-3453</p> <p>9 christopher.cox@skadden.com</p> <p>10 richard.bernardo@skadden.com</p> <p>11</p> <p>12 Also present:</p> <p>13</p> <p>14 Jonathan Jaffe</p> <p>15 ESI Consultant</p> <p>16 Jim Partridge</p> <p>17 Tele-Video Production Services</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 449</p> <p>1 --oOo-- 2 PROCEEDINGS 3 --oOo-- 4 THE VIDEOGRAPHER: We are on the record at 5 11 -- excuse me. We are on the record at 6 9:01 a.m. 7 This marks -- today's date is October 19, 8 2018. 9 This is the continuation of the deposition 10 of James Mittenenthal. This is Volume III, Disk 11 Number 1. 12 Counsel, you may proceed. 13 MR. SWANSON: Thank you. 14 JAMES PETER MITTENTHAL 15 previously sworn as a witness, 16 testified as follows: 17 DIRECT EXAMINATION BY MR. SWANSON (Cont'd): 18 Q. Good morning, Mr. Mittenenthal. 19 A. Good morning. 20 Q. Your deposition is continuing now, and are 21 you ready to go forward today? 22 A. Yes. 23 Q. Any reason you can't give your best 24 testimony? 25 A. No.</p>	<p style="text-align: right;">Page 451</p> <p>1 and acknowledge receipt and that sort of thing? 2 A. Yes. 3 Q. And does the software -- and what's the 4 name of the software? 5 A. Exterro. 6 Q. And it says, "Visit the legal hold manager 7 compliance portal, legal hold manager." 8 And does the software track who the 9 intended recipient -- recipients are? 10 A. Of what? 11 Q. Of the hold. In other words, to whom it's 12 sent? 13 A. Yes. 14 Q. And I notice there's a section in here 15 that tells recipients that they can suggest other 16 recipients of the hold. 17 Did you see that? 18 A. Can you reference me to that section? 19 Yes. I see it. 20 Q. Yes. "Suggest other custodians." 21 Do you see that? 22 A. Yes. 23 Q. And does the software track who gets 24 suggested? 25 A. It's my understanding that the company can</p>
<p style="text-align: right;">Page 450</p> <p>1 Q. Okay. So I want to ask you a couple 2 follow-ups on one of the legal holds. So if you'd 3 go to Exhibit 1A, and that's Tab 1A in your 4 binder. 5 Do you have that in front of you? 6 A. Yes, I do. 7 Q. Now, this is the 2' -- I think it's the 8 current or most recent Johnson & Johnson legal 9 hold notice in asbestos-related talc litigation; 10 correct? 11 A. Yes. 12 Q. And I wanted -- I want to go through a 13 little bit on this notice. It looks like there is 14 some kind of software that notes -- a notice is 15 sent via an email, I guess; is that right? This 16 notice that -- is that how it gets sent to 17 recipients? 18 A. Yes. 19 Q. Okay. And there is some kind of software 20 that's related to this in terms of them 21 acknowledging receipt in various things; is that 22 right? 23 A. Yes. 24 Q. And does that software track certain kinds 25 of information in terms of when they receive it</p>	<p style="text-align: right;">Page 452</p> <p>1 add those people to the list and that they would 2 be tracked. 3 Q. Does the software track when each 4 recipient acknowledges receipt of the hold? 5 A. I believe it does. 6 Q. Okay. And does the software track who was 7 trained on legal holds, or what the -- anything -- 8 information about the recipients of the hold's 9 training? 10 A. From my fact finding, I have other 11 vehicles, eUniversity, other modules unrelated to 12 Exterro that track training. And I can pull out 13 my notes for those. 14 Q. We may do that later. 15 But so that the -- you're not aware that 16 this software actually would have that 17 information; correct? 18 A. Correct. 19 Q. Okay. I noticed that it -- it states here 20 in the first page that "the instruction is within 21 seven days, please visit the legal hold manager 22 compliance portal," and "review and acknowledge 23 this notice." 24 Now, what is triggered with -- what 25 triggers the seven days? At the point they open</p>

<p>Page 453</p> <p>1 that email, the recipient of the soft -- of the 2 email regarding this legal hold? In other words, 3 I work for Johnson & Johnson, I get an email with 4 this legal hold notice. If I didn't open my email 5 for several days, does that seven days start 6 running when I open my email? 7 A. I would -- I would be guessing. My -- I 8 would -- I have a sense of how it works, but I -- 9 I'm not -- I would need to do further research to 10 determine that. 11 Q. I'm interested in what your -- I don't 12 want you to guess, but, based on your experience, 13 what is your expectation? 14 A. My expectation would be from the -- from 15 the date sent. 16 Q. From the date the email gets sent? 17 A. Yes. 18 Q. Okay. Do you know why they give seven 19 days for that? Couldn't somebody -- for example, 20 if I'm an employee and I open the email 21 immediately and I see that there's this legal hold 22 notice, why so long before I have to acknowledge 23 that I've gotten the legal hold notice? 24 MR. COX: Object to the form of the 25 question.</p>	<p>Page 455</p> <p>1 MR. COX: Object to the form. 2 THE WITNESS: Well, I'm not sure if it's a 3 philosophical or legal distinction. But if I see 4 the email, I can -- I'm able to comply even before 5 I acknowledge compliance. So the email tells me 6 that there's something going on and that I have 7 something I should or should not be doing. 8 The acknowledgment obviously is a formal 9 indication that I read and understood. It doesn't 10 mean I can't be doing those things before I even 11 can formally comply with the -- with the notice. 12 BY MR. SWANSON: 13 Q. Right. But the idea of having the receipt 14 acknowledgment is so that the company can track 15 who knew when; right? 16 A. Well, I don't know if I can speculate to 17 all the motives. It certainly gives the company a 18 sense of -- from an overall perspective who has -- 19 who has acknowledged and, therefore, a way to 20 understand who needs to be followed up on, who 21 needs to have their manager contacted, who needs 22 additional action taken. 23 Q. Right. Now, if somebody gets it and they 24 don't acknowledge it and they wait the maximum 25 period -- let's say this person doesn't have good</p>
<p>Page 454</p> <p>1 THE WITNESS: I mean, it calls for 2 speculation on my part, but perhaps someone is out 3 of the office on a plane traveling over a long 4 weekend. It would give them an opportunity to get 5 in front of a place where they can operate the 6 Chrome browser and access the portal. 7 BY MR. SWANSON: 8 Q. Okay. That's -- you're assuming that, 9 correct, based on your experience? 10 A. Those would be -- as I mentioned, I don't 11 know the precise reasons seven days was chosen. I 12 can only speak to why there may be some days given 13 in terms of the time period. 14 Q. Okay. Now, isn't it true that obviously 15 the longer that you wait to require 16 acknowledgment, the greater the chances that some 17 document could get destroyed that should have been 18 preserved under the notice; correct? 19 MR. COX: Object to the form. 20 BY MR. SWANSON: 21 Q. Well, let's say if you gave 30 days, 22 right, so any period that you wait beyond what's 23 minimally necessary to acknowledge receipt of that 24 increases the likelihood that documents that are 25 subject to the hold get destroyed; true?</p>	<p>Page 456</p> <p>1 intentions, and you said, you know, you're 2 assuming somebody is going to -- they see the 3 email, they can comply anyway. But until they 4 acknowledge it, the company has no way of knowing 5 if somebody actually read it and looked at it, 6 and, furthermore, if somebody had an intention to 7 get rid of something within that window of seven 8 days, that would give them the opportunity to do 9 it before they even acknowledge receipt; correct? 10 A. Well -- 11 MR. COX: Object to the form. 12 Go ahead. 13 THE WITNESS: I'm sorry. 14 The company does not know that the person 15 has formally acknowledged until they do so. But 16 this -- the system operates against the backdrop 17 of all the training and records management 18 awareness and legal hold awareness so that the 19 automated portion of it that I get a legal hold 20 and I'm responding to it formally is just a part 21 of the overall duties and expectations and 22 training for every custodian. And so it's 23 understood that if I get a notice, it's not the 24 first time I've ever heard of a -- what a legal 25 hold is and what my responsibilities are.</p>

<p>Page 457</p> <p>1 MR. SWANSON: I'm going to move to strike 2 that last answer as being nonresponsive. 3 (Whereupon, Plaintiff's Exhibit 38 was 4 marked for identification.) 5 BY MR. SWANSON: 6 Q. Mr. Mittenenthal, I'm handing you Exhibit 38 7 to your deposition. 8 Do you have Exhibit 38 in front of you? 9 A. I do. 10 Q. And this is a Johnson & Johnson document 11 dated April 15, 1969, and the subject matter is 12 "alternative domestic source" -- "talc sources." 13 Do you see that? 14 A. "Alternate domestic talc sources." 15 Q. "Alternate" -- thank you -- "domestic talc 16 sources." 17 You have been asked about this document 18 before; correct? 19 Do you remember this document? 20 A. I frankly don't recall. 21 Q. Okay. You see here in paragraph -- 22 paragraph 3 here that -- well, the author of this 23 is a T.M. Thompson, M.D., and he's writing to 24 William Ashton, W.H. Ashton, at Johnson & Johnson; 25 correct?</p>	<p>Page 459</p> <p>1 General Johnson and several pediatricians 2 expressing concern over the possibility of adverse 3 effects on the lungs of babies or mothers who 4 might inhale any substantial amounts of our talc 5 formulations. In the past we have replied to the 6 effect that, since our talc is essentially all of 7 the platelet-type of crystalline structure and is 8 of a size which would not be likely to enter the 9 pulmonary alveoli, we would not regard the usage 10 of our powders as presenting any hazard." 11 Do you see that? 12 A. Yes, I do. 13 Q. And then next sentence says, "Obviously, 14 if we do not" -- "if we do include tremolite in 15 more than unavoidable trace amounts, this sort of 16 negation of such inquiries could no longer 17 pertain." 18 Do you see that? 19 A. Yes. 20 Q. And then if you look at the next page, the 21 second paragraph, you see where it says -- author 22 says, "Since pulmonary diseases including 23 inflammatory fibroplastic and neoplastic types 24 appear to be on the increase, it would seem to be 25 prudent to limit any possible content of tremolite</p>
<p>Page 458</p> <p>1 A. Well, I see that's what's written on the 2 document, yes. 3 Q. That's what the document says. 4 And Mr. Thompson tells Mr. Ashton, "We 5 have been concerned to a much greater extent with 6 regard to possible dangers relative to inhalation 7 of the talc with a spicule or needle-like 8 crystalline structure as compared to the flat 9 platelet-type of crystalline structure." 10 Do you see that? 11 A. Yes. 12 Q. Then he goes on to talk about how there 13 are reports in the literature of talcosis. 14 Do you see that? Right after that 15 sentence. 16 A. I'm looking for... 17 Q. There are reports in the literature? 18 A. Oh, yes. Yes. Yes. 19 Q. Okay. 20 If you go towards the bottom, the 21 second-to-last sentence. It says, "In the past we 22 have applied" -- oh, wait. "Furthermore." Do you 23 see that halfway through that paragraph? 24 "Furthermore we have occasionally received 25 inquiries from various individuals including</p>	<p>Page 460</p> <p>1 in our powder formulations to an absolute minimum. 2 To the best of my knowledge, we have never been 3 faced with any litigation involving either skin or 4 lung penetration in our formulas." 5 Then it talks about they were "faced with 6 more or less serious problem resulting from what 7 we have considered to have been unjust accusation 8 of danger due to the presence of small amount of 9 boric acid in our talc." 10 Do you see that? 11 MR. COX: Object to the form of the 12 question. 13 THE WITNESS: Yes. 14 BY MR. SWANSON: 15 Q. It says, you see the sentence here, "It is 16 conceivable that a similar situation might 17 eventually arise if it became known that our talc 18 formulations contained any significant amount of 19 tremolite. Since the usage of these products is 20 so widespread and the existence of pulmonary 21 disease is increasing, it is not inconceivable 22 that we could become involved in litigation in 23 which pulmonary fibrosis or other changes might be 24 rightfully or wrongfully attributed to inhalation 25 of our powder formulations. It might be that</p>

<p style="text-align: right;">Page 461</p> <p>1 someone in the law department should be consulted 2 with regard to the defensibility of our position 3 in the event that such a situation should ever 4 arise." 5 Do you see that? 6 A. "Could ever arise," yes. 7 Q. "Could ever arise." Thank you. 8 So in -- as of April 15, 1969, people in 9 the research and development department, 10 Mr. Ashton in -- at Johnson & Johnson was aware -- 11 anticipating at least the possibility of 12 litigation from tremolite-contaminated talc and 13 allegations of lung disease resulting from that; 14 true? 15 MR. COX: Object to the form of the 16 question. Mischaracterizes the document. 17 THE WITNESS: I'm not in a position to 18 say. I'm not familiar with this document. I'm 19 not -- it's beyond my scope to make any assessment 20 of its content. 21 BY MR. SWANSON: 22 Q. Well, you're the person who's here to talk 23 about legal holds and you're also here to talk 24 about the documents that have been produced in 25 this case and whether or not these are authentic</p>	<p style="text-align: right;">Page 463</p> <p>1 question. 2 THE WITNESS: I -- I'm not familiar with 3 the content. I'm not able to speak to what the 4 content means in any sense of the scientific, 5 factual, or business or medical sense. To the 6 extent that this is an actual Bates number, and I 7 can certainly confirm that, I have no reason to 8 believe that -- nor does the company believe that 9 there are documents that have been produced that 10 are not authentic documents. 11 But in terms of the content, I can't speak 12 to it. 13 Q. I'm not asking -- I'm asking you first 14 whether or not this is an authentic business 15 record of Johnson & Johnson. And you'll agree 16 that it is; true? 17 MR. COX: Object to the form of the 18 question. 19 THE WITNESS: No. The -- the -- the 20 term "business record" is one that I -- I believe 21 entails a legal judgment. And I think the first 22 time you asked me you didn't say the -- I don't 23 believe you said "business." 24 BY MR. SWANSON: 25 Q. Let me ask it differently. It's an</p>
<p style="text-align: right;">Page 462</p> <p>1 documents. 2 This is an authentic Johnson & Johnson 3 document; correct? 4 A. I can't say one way or the other. 5 Q. Well, what is it about -- this was -- you 6 can see that this is Johnson & Johnson's Bates 7 numbers; correct? 8 A. I frankly -- oh, yes. I do see a Bates 9 number on it. 10 Q. So you know that that was produced by 11 Johnson & Johnson in this case; true? 12 A. I would want to study it further and 13 verify that, but I do see a Bates number on it. 14 Q. All right. Well, you understand you were 15 noticed, you were -- have been produced as the 16 corporate representative to talk about the 17 authenticity -- authenticity of these documents 18 and whether or not they're business records. 19 You understand that; right? 20 A. I understand that was part of my notice, 21 yes. 22 Q. Okay. So what is it about this document 23 that makes you unable to say whether or not that 24 is an authentic Johnson & Johnson business record? 25 MR. COX: Object to the form of the</p>	<p style="text-align: right;">Page 464</p> <p>1 authentic record of Johnson & Johnson; correct? 2 A. It -- it appears to be a document from the 3 production, and if it is -- if that is the case, 4 then the company has no reason to believe that it 5 is not an authentic document. 6 Q. An authentic document that was created in 7 Johnson & Johnson's regular course of business; 8 true? 9 A. I don't know. 10 MR. SWANSON: Counsel, I want to meet and 11 confer on this because he is designated to speak 12 on these issues and we're talking about, you know, 13 business record in the simplest sense: Is this 14 authentic and is it something created in the 15 regular course of their business. He needs to be 16 able to talk about that. That's one of the 17 noticed topics. 18 MR. COX: I think he is talking about 19 that. I don't think -- 20 MR. SWANSON: Well, he needs to be able 21 to -- he isn't because he's saying, I don't know, 22 I can't say. 23 MR. COX: Well, you're asking compound 24 questions and I think he's trying to answer them 25 the best he can.</p>

<p>Page 465</p> <p>1 BY MR. SWANSON: 2 Q. Was this document, Exhibit 38, created in 3 the regular course of Johnson & Johnson's 4 business? 5 A. I simply don't have the information to 6 answer that. It -- the -- based on the fact that 7 it appears to be a document produced in this 8 litigation, the company does not doubt -- have any 9 special reason to question its authenticity, but I 10 cannot speak to whether it's -- how it was 11 created, whether it was in the ordinary course of 12 business, whether it was in any sense of how the 13 company chose to create its documents. It is -- 14 the document population certainly contains many 15 records created in the course of business. I'm 16 not able to make a judgment as to this particular 17 document as to the circumstances by which it was 18 created. 19 Q. Do you have any reason to believe that any 20 documents that are created that were produced in 21 this case, in Leavitt or Fong, that are on 22 Johnson & Johnson letterhead are not records that 23 were created in the regular course of Johnson & 24 Johnson's business? 25 MR. COX: Object to the form.</p>	<p>Page 467</p> <p>1 here, nor would I be able to make a judgment as to 2 whether it's a business record created in the 3 course of business and any other categorization of 4 it. 5 Q. Okay. 6 MR. SWANSON: We're going to have to meet 7 and confer on that. He's not an adequate witness 8 on this issue. These are really simple questions 9 and he is tasked with doing that and he's not able 10 to do it. 11 MR. COX: I disagree. I mean, I think he 12 answered your question about authenticity and he 13 answered your question about whether it was 14 created in -- in connection with Johnson & 15 Johnson's business. I think he's appropriately 16 making a distinction in terms of the legal import 17 of the term "business record," but I think he 18 answered the question -- the other two questions 19 you asked. 20 MR. SWANSON: Well, I left out the 21 term "business record" and I started asking if it 22 was created in the regular course of their 23 business. That's not a highly legal term. 24 MR. COX: No. And I think he answered 25 that question and said it was.</p>
<p>Page 466</p> <p>1 THE WITNESS: I -- if -- to the extent 2 that the regular course of business assumes a 3 legal judgment, I'm not able to say one way or the 4 other. I can say that amongst the information 5 produced where there are records created in the 6 course of the company's business operations, I 7 cannot speak to the providence, the context, or 8 the classification of this particular document. 9 BY MR. SWANSON: 10 Q. But it was created in Johnson & Johnson's 11 business; correct? You just said that. 12 A. It was created in such a manner that the 13 company has no reason to doubt its authenticity, 14 to the extent that it was produced in this -- in 15 this litigation. 16 Q. As a Johnson & Johnson record; correct? 17 A. I don't know what -- what does that mean, 18 Johnson & Johnson? 19 Q. It means this is a Johnson & Johnson 20 letter, correct, sent in their -- in the course of 21 their business. This isn't somebody else's 22 business; right? This is Johnson & Johnson's 23 business we're talking about; right? 24 A. I -- I can agree with you that the words 25 at the top say "Johnson & Johnson," but I'm not</p>	<p>Page 468</p> <p>1 MR. SWANSON: You're agreeing that it was, 2 correct, as counsel for Johnson & Johnson, on this 3 document? 4 MR. COX: That that was -- that that's a 5 Johnson & Johnson -- created in Johnson & 6 Johnson's business, yes. Yes. 7 MR. SWANSON: Okay. 8 BY MR. SWANSON: 9 Q. All right. So, with regard to this 10 document, is there -- was -- let me ask you this: 11 Legal holds can be issued either because a lawsuit 12 has been filed, correct, or because a company 13 anticipates litigation; correct? 14 MR. COX: Object to the form of the 15 question to the extent it calls for a legal 16 conclusion. 17 BY MR. SWANSON: 18 Q. Those are two situations in which a legal 19 hold could be... 20 A. And -- and I would concur, but there's 21 many situations where a legal hold could be 22 issued, and the law department makes that 23 determination as to what to issue and when. 24 Q. But the legal holds themselves talk about 25 anticipated, and, Johnson & Johnson's</p>

<p style="text-align: right;">Page 469</p> <p>1 documentation that I've seen, and I can't point 2 you to the exact document, mention both litigation 3 and anticipated litigation in terms of when holds 4 are appropriate; correct? 5 A. Well, I've seen language like Johnson & 6 Johnson -- or so and so is party to litigation. 7 That I recall seeing in the notice. 8 Q. But you agree that anticipated litigation 9 is sometimes a trigger for issuing a hold, 10 correct, for a company? 11 A. In the hypotheticals, yes. Absolutely. 12 Q. Do you have any information that Johnson & 13 Johnson issued a legal hold in 1969 in instructing 14 Johnson & Johnson employees not to destroy 15 documents relating to the testing of Johnson's 16 Baby Powder or talc that was used in Johnson's 17 Baby Powder for the presence of asbestos? 18 A. I have no information as to that. 19 Q. Is there anything that you're aware of 20 that prevented anybody at Johnson & Johnson from 21 issuing a hold on testing documents at this time 22 in 1969? 23 A. I have -- I have no information one way or 24 the other. That was not part of my research. 25 (Whereupon, Plaintiff's Exhibit 39 was</p>	<p style="text-align: right;">Page 471</p> <p>1 faith belief that it first became aware of a claim 2 of alleged exposure to asbestos with respect to 3 defendant's talc in connection with Westfall v. 4 Whittaker, Clark & Daniels, et al., Case Number 5 79-0269, in the United States District Court for 6 the District of Rhode Island in which plaintiffs 7 alleged injury was mesothelioma, and plaintiff was 8 represented by Decoff & Grimm of Providence, 9 Rhode Island. Defendant states that the J&J 10 entity Windsor Minerals was voluntarily dismissed 11 from the case." 12 Have you seen this before? 13 A. I've seen the interrogatory responses, 14 yes. 15 Q. So you were aware that Johnson & Johnson, 16 or its operating entity company, Windsor Minerals, 17 was sued in the Westfall case; correct? 18 A. I'm aware of the question and the answer. 19 Q. Okay. Were you aware that -- were you 20 aware that Johnson & Johnson's Windsor Minerals 21 had been sued in the Westfall case? 22 A. I have a general understanding of that. 23 Q. And to your knowledge, when was that? 24 A. I'm not familiar with the precise date. 25 (Whereupon, Plaintiff's Exhibit 40 was</p>
<p style="text-align: right;">Page 470</p> <p>1 marked for identification.) 2 BY MR. SWANSON: 3 Q. Mr. Mittenenthal, I'm handing you Exhibit 4 Number 39. 5 Let your counsel see that for a moment. 6 Do you have Exhibit Number 39 in front of 7 you? 8 A. Yes, I do. 9 Q. And these are Defendant Johnson & Johnson 10 Consumer, Inc.'s September 2018 Amended Responses 11 to Plaintiff's LAOSD Standard Interrogatories in 12 the Fong case; correct? 13 A. I see that, yes. 14 Q. Okay. And if you go to page 21 of this 15 document, Interrogatory Number 36, do you see the 16 question is, "When did you first receive notice 17 that any person including any agent" -- "employee 18 or agent claimed injury as a result of exposure to 19 asbestos or asbestos-containing product supplied 20 by you?" 21 Do you see that? 22 A. Yes, I do. 23 Q. And then starting at the second sentence 24 of the answer, "After reasonable investigation, 25 defendant states that it has reasonable and good</p>	<p style="text-align: right;">Page 472</p> <p>1 marked for identification.) 2 BY MR. SWANSON: 3 Q. Let me hand you Exhibit Number 40 to your 4 deposition. 5 MR. COX: Do you have an extra copy of 6 that, Mark? 7 Thank you. 8 BY MR. SWANSON: 9 Q. Do you have Exhibit 40 in front of you? 10 A. Yes. 11 Q. Okay. And I've just given you the -- here 12 the first few pages of a transcript of a Roger 13 Miller in the Westfall case. 14 Do you see that? 15 A. Yes. 16 Q. And you see that's the same case number, 17 790269? 18 A. Yes, I do. 19 Q. And what was the date of that deposition? 20 A. October 29, 1982. 21 Q. And if you go to the second page of this 22 on appearances, do you see that Windsor Minerals 23 was represented at the deposition? 24 A. I do. 25 Q. And you know that Windsor Minerals, Inc.</p>

<p style="text-align: right;">Page 473</p> <p>1 was a subsidiary of Johnson & Johnson that 2 supplied talc to Johnson & Johnson for Johnson's 3 Baby Powder and cosmetic talc products; correct? 4 A. That's my general understanding. 5 Q. And from this information it's clear that 6 Johnson & Johnson was aware of the lawsuit; true? 7 MR. COX: Object to the form of the 8 question. 9 BY MR. SWANSON: 10 Q. From the interrogatory response that I 11 provided you? 12 A. Well, it -- by inference it would appear 13 that the company was aware by virtue of counsel. 14 Q. Okay. Right. 15 And -- okay. Did Johnson & Johnson 16 instruct anyone at Windsor Minerals at that time 17 to preserve or not destroy documents, information, 18 or physical evidence related to talc from Windsor 19 Minerals, Inc. Vermont mines -- 20 MR. COX: Object to form. 21 BY MR. SWANSON: 22 Q. -- or related to products manufactured 23 from talc that came from Windsor Minerals mines? 24 MR. COX: Object to the form of the 25 question.</p>	<p style="text-align: right;">Page 475</p> <p>1 product. 2 Q. And you got this from the lawyers, right, 3 this understanding? 4 A. Yes. 5 Q. Did you also get an understanding that 6 this came from the same mines where cosmetic talc 7 was being mined? 8 MR. COX: Object to the form. 9 THE WITNESS: That was outside the scope 10 of my investigation. 11 BY MR. SWANSON: 12 Q. I see. So you didn't ask that question or 13 find the answer to that? 14 A. I asked -- I asked -- which question? 15 Q. Whether or not the mines that were 16 involved in -- in the Westfall case issues were 17 the same mines that were producing cosmetic talc 18 for cosmetic talc products for Johnson & Johnson. 19 A. I -- I would not have viewed that as 20 within the scope of my investigation. 21 Q. Speaking on behalf of Johnson & Johnson on 22 the issue of legal holds and preservation of 23 documents, are you aware of any legal hold being 24 issued with respect to the Westfall case? 25 A. I'm -- I'm not aware of holds. I</p>
<p style="text-align: right;">Page 474</p> <p>1 THE WITNESS: That was outside the scope 2 of my investigation. 3 BY MR. SWANSON: 4 Q. Well, the scope of your investigation was 5 to investigate talc hold issues; correct? 6 MR. COX: Object to the form of the 7 question misstates the scope of the notice for 8 which this witness has been tendered. 9 BY MR. SWANSON: 10 Q. You know from looking at the notice that 11 we asked what efforts were made by Johnson & 12 Johnson to preserve documents, correct -- 13 MR. COX: Object to the form. 14 BY MR. SWANSON: 15 Q. -- as well as samples? 16 MR. COX: Object to the form of the 17 question. Misstates what the notice says. 18 THE WITNESS: My understanding was that 19 the -- my investigation was concerning consumer 20 talc products. 21 BY MR. SWANSON: 22 Q. And what distinction are you making here 23 about Westfall? 24 A. I have a general and limited understanding 25 that Westfall did not involve a consumer talc</p>	<p style="text-align: right;">Page 476</p> <p>1 requested holds that related to consumer talc. I 2 received those holds. I'm not aware of other 3 holds. 4 Q. Okay. You are aware of the Westfall case? 5 You were made aware of that and you were 6 specifically made aware of the fact that the case 7 allegations itself weren't about a cosmetic talc 8 product; true? 9 A. I have general knowledge of that, yes. 10 Q. But you didn't bother to find out whether 11 or not the talc issues were related to these 12 cases; true? 13 MR. COX: Object to the form. 14 THE WITNESS: I -- looking at the 15 deposition notice and my responsibilities, I did 16 not see that my investigation included 17 understanding where talc came from. I was focused 18 on responding to the deposition topics. 19 BY MR. SWANSON: 20 Q. You would agree with me, though, that if 21 the area where the talc was being mined that's at 22 issue in the Johnson case was an area where 23 cosmetic talc was being mined and in addition it's 24 a mesothelioma case, that there would be many, 25 many overlapping issues with the cosmetic talc</p>

<p style="text-align: right;">Page 477</p> <p>1 case; correct?</p> <p>2 MR. COX: Object to the form.</p> <p>3 THE WITNESS: I know that -- that's a</p> <p>4 legal conclusion. I -- I think I'm being asked to</p> <p>5 provide, and I -- I just can't speak to that.</p> <p>6 BY MR. SWANSON:</p> <p>7 Q. You understand that mesothelioma results</p> <p>8 from inhalation typically; correct?</p> <p>9 MR. COX: Object to the form. Beyond the</p> <p>10 scope of the notice.</p> <p>11 THE WITNESS: I'm not an expert on the</p> <p>12 causes of mesothelioma.</p> <p>13 BY MR. SWANSON:</p> <p>14 Q. In any case, you're not aware of any legal</p> <p>15 hold notice, you've never heard of any legal hold</p> <p>16 notice being issued with respect to any type of</p> <p>17 talc prior to 1999; true?</p> <p>18 A. I am not aware of any notices prior to</p> <p>19 1999.</p> <p>20 (Whereupon, Plaintiff's Exhibit 41 was</p> <p>21 marked for identification.)</p> <p>22 BY MR. SWANSON:</p> <p>23 Q. Handing you Exhibit 41 to your deposition.</p> <p>24 Do you have that in front of you?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 479</p> <p>1 plaintiff alleges that they purchased the product.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And do you see that Number 4, the</p> <p>5 plaintiff alleges talcosis from long-term use of</p> <p>6 Johnson's Baby Powder?</p> <p>7 A. I see it.</p> <p>8 Q. And in Number 5, they are alleging severe</p> <p>9 and permanent injuries from that exposure.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. If you go to the last page, you see</p> <p>13 the date of the complaint?</p> <p>14 A. Yes.</p> <p>15 Q. And what was the date of the complaint?</p> <p>16 A. October 11, 1983.</p> <p>17 Q. And Johnson & Johnson obviously was aware</p> <p>18 of this lawsuit; correct?</p> <p>19 MR. COX: Object to the form.</p> <p>20 THE WITNESS: Well, I have not seen this</p> <p>21 document before and can't speak to it. By -- by</p> <p>22 common sense, it would appear that Johnson &</p> <p>23 Johnson was aware of this.</p> <p>24 BY MR. SWANSON:</p> <p>25 Q. Right. Because this document -- I didn't</p>
<p style="text-align: right;">Page 478</p> <p>1 Q. Have you seen -- now, Exhibit 41, you can</p> <p>2 see that this is a Johnson & Johnson Bates number</p> <p>3 at the bottom; correct?</p> <p>4 A. Yes. I see what appear to be two</p> <p>5 different Bates numbers.</p> <p>6 Q. And you recognize those are Bates numbers</p> <p>7 that Johnson & Johnson uses; you've seen those on</p> <p>8 other documents that they've produced from their</p> <p>9 records; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And this is -- appears to be a complaint</p> <p>12 in a case called Anthony Gambino and Rose Marie</p> <p>13 Gambino, his wife v. Johnson & Johnson Baby</p> <p>14 Products Company; correct?</p> <p>15 A. I see that.</p> <p>16 Q. Were you aware of the Gambino case?</p> <p>17 A. I don't recall it specifically.</p> <p>18 Q. And if you go to the last -- if you go</p> <p>19 to -- well, on the first page, first claim of</p> <p>20 relief, and you can see that the product at issue</p> <p>21 is Johnson's Baby Powder Purest Protection.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And, then, if you go to the second page,</p> <p>25 there is a mention in paragraph 2 that the</p>	<p style="text-align: right;">Page 480</p> <p>1 make this up or even get it off the Court's Web</p> <p>2 site or anything; I got it from Johnson & Johnson</p> <p>3 because that's their Bates number; right?</p> <p>4 A. I see the Bates number, yes.</p> <p>5 Q. And speaking on behalf of Johnson &</p> <p>6 Johnson on the issue of legal holds and</p> <p>7 preservation of documents and evidence, you are</p> <p>8 not aware of any legal hold being issued at the</p> <p>9 time of this Gambino case with respect to talc</p> <p>10 litigation issues and Johnson's Baby Powder; true?</p> <p>11 MR. COX: Object to the form.</p> <p>12 THE WITNESS: I have no information as to</p> <p>13 whether a hold was issued or not issued or what</p> <p>14 the circumstances were.</p> <p>15 BY MR. SWANSON:</p> <p>16 Q. Now, the reality is you're not aware of</p> <p>17 any legal hold being issued in any kind of talc</p> <p>18 litigation case prior to 1999. So, as the</p> <p>19 spokesperson for Johnson & Johnson, Johnson &</p> <p>20 Johnson did not issue a legal hold in response to</p> <p>21 this complaint; correct?</p> <p>22 MR. COX: Object to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: I'm sorry, are you asking me</p> <p>25 to -- to verify that statement or are you asking</p>

<p style="text-align: right;">Page 481</p> <p>1 me if I know it?</p> <p>2 BY MR. SWANSON:</p> <p>3 Q. I'm asking you to verify that.</p> <p>4 A. I don't --</p> <p>5 MR. COX: Object to the form.</p> <p>6 THE WITNESS: I'm sorry.</p> <p>7 I am not aware of holds prior to 1999, but</p> <p>8 I'm not speaking as to whether there were or were</p> <p>9 not holds issued.</p> <p>10 BY MR. SWANSON:</p> <p>11 Q. Well, sure you are. You are the</p> <p>12 representative. You are Johnson & Johnson sitting</p> <p>13 here speaking as Johnson & Johnson today, and I'm</p> <p>14 asking you about legal holds, and it's a noticed</p> <p>15 topic.</p> <p>16 So did Johnson & Johnson issue a legal</p> <p>17 hold as a result of the Gambino case --</p> <p>18 MR. COX: Object to the form of the</p> <p>19 question.</p> <p>20 BY MR. SWANSON:</p> <p>21 Q. -- in 1983?</p> <p>22 MR. COX: Same objection.</p> <p>23 THE WITNESS: That was -- that was not</p> <p>24 part of my investigation. I don't have that</p> <p>25 information.</p>	<p style="text-align: right;">Page 483</p> <p>1 MR. SWANSON: Whoever's on the phone, one</p> <p>2 of you, please mute your phone.</p> <p>3 MR. BERNARDO: This is Rich. Mine has</p> <p>4 been on mute.</p> <p>5 MR. SWANSON: Okay.</p> <p>6 This is a Fong privilege log.</p> <p>7 (Whereupon, Plaintiff's Exhibit 42 was</p> <p>8 marked for identification.)</p> <p>9 BY MR. SWANSON:</p> <p>10 Q. Do you have Exhibit 42 in front of you?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And you can see that this is a privilege</p> <p>13 log that was produced by Johnson & Johnson in the</p> <p>14 Fong case; correct?</p> <p>15 A. Appears to be, yes.</p> <p>16 Q. Have you seen this privilege log before?</p> <p>17 A. I have not.</p> <p>18 Q. So you didn't have anything to do with</p> <p>19 making it a privilege log; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Now I want to go through some -- you</p> <p>22 understand what the general purpose of a privilege</p> <p>23 log is; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. If you go to page 2 of this -- and</p>
<p style="text-align: right;">Page 482</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. So the answer is you don't know, it was</p> <p>3 your assignment, so there's two options: Either</p> <p>4 you don't know -- you did your investigation and</p> <p>5 there wasn't one, or it hasn't been produced or</p> <p>6 it's been destroyed or they never issued one.</p> <p>7 Are there any other options I'm not</p> <p>8 thinking of?</p> <p>9 MR. COX: Object to the form.</p> <p>10 THE WITNESS: My objective was to identify</p> <p>11 the holds that were available. As far as the</p> <p>12 holds that weren't available, if there were any,</p> <p>13 I -- I can't speak to the absence of something as</p> <p>14 to why it was or wasn't there. I don't know one</p> <p>15 way or the other if there was a hold issued or</p> <p>16 not. I simply asked for the holds that were</p> <p>17 available.</p> <p>18 BY MR. SWANSON:</p> <p>19 Q. As Johnson & Johnson speaking today here,</p> <p>20 do you have any evidence of a hold as a result of</p> <p>21 the Gambino case in 1983?</p> <p>22 A. I do -- I have not received a hold</p> <p>23 associated with that case.</p> <p>24 Q. Okay. That's all I have about that. Put</p> <p>25 that in the stack.</p>	<p style="text-align: right;">Page 484</p> <p>1 I know the writing is small, but I -- you're</p> <p>2 pretty young and I assume you can read it.</p> <p>3 A. Okay.</p> <p>4 Q. Page 2. Tell me when you're there.</p> <p>5 A. I'm on page 2.</p> <p>6 Q. You see on page 2 it lists the document.</p> <p>7 There's various columns for this, and you can see</p> <p>8 there's -- including privilege log number, the</p> <p>9 Bates number, the date of the document, the</p> <p>10 author, the recipient, people who were copied,</p> <p>11 very -- sometimes a little bit of information</p> <p>12 about subject matter but not so much, and a</p> <p>13 privilege description and a privilege claim;</p> <p>14 correct?</p> <p>15 MR. COX: Object to the form.</p> <p>16 THE WITNESS: Yeah. I see those are the</p> <p>17 column headings on page 1.</p> <p>18 BY MR. SWANSON:</p> <p>19 Q. Okay. And if you go to page 2, you see</p> <p>20 the third one down, there's a document that --</p> <p>21 about which Johnson & Johnson's claiming privilege</p> <p>22 dated 7/22/1981 from William Ashton to Frank</p> <p>23 Bolden.</p> <p>24 Do you see that entry?</p> <p>25 A. Yes, I do.</p>

<p style="text-align: right;">Page 485</p> <p>1 Q. If you just go to the right there, you see 2 it says, "Memorandum prepared at the request of 3 counsel pursuant to pending and anticipated talc 4 litigation." 5 Do you see that? 6 A. Yes, I do. 7 Q. I don't know what pending talc litigation 8 they're referring to. 9 Do you know if any legal holds were issued 10 with respect to the pending talc litigation that's 11 being referred to in that item from 1981? 12 MR. COX: Object to the form. 13 THE WITNESS: I don't know and I simply 14 didn't investigate those types of notations from 15 the privilege log. 16 BY MR. SWANSON: 17 Q. Okay. You're not aware of any being 18 privilege log from 1981 related to talc 19 litigation, are you? 20 A. I'm sorry. One more time, please. 21 Q. You're not aware of any talc litigation 22 related legal hold being issued in 1981; correct? 23 A. I'm not aware of one. I did not receive 24 one when I requested. 25 Q. Okay. The next item down, do you see</p>	<p style="text-align: right;">Page 487</p> <p>1 references to communications dated November 30, 2 1982, between a George Lee and an Edward 3 Leibensperger? 4 A. I see that, yes. 5 Q. And date of communication is 11/30/1982; 6 correct? 7 A. Well, the first four -- 8 Q. That's what I am -- 9 A. Yeah. 10 Q. Okay. And it refers to -- the first one 11 says, "Letter from client to counsel providing 12 materials in anticipation of litigation for 13 counsel to provide legal advice regarding talc 14 sample evidence." 15 Do you see that? 16 A. Yes. 17 Q. And then the next one says, "Attachment 18 between counsel and client sent at counsel's 19 request seeking legal advice regarding ongoing 20 talc litigation." 21 Do you see that? 22 A. I do. 23 Q. So, as of November 30, 1982, whatever case 24 they're referring to these issues in, or 25 anticipated cases, was any legal hold issued by</p>
<p style="text-align: right;">Page 486</p> <p>1 there's an entry for May 5, 1989? 2 A. Yes. 3 Q. And there's some kind of communication 4 between Ira Dembro and William Ashton. 5 Do you see that? 6 A. I do. 7 Q. And, again, this indicates there's a 8 memorandum prepared by counsel pursuant to pending 9 and anticipated litigation prepared by counsel 10 pursuant to pending and anticipated talc 11 litigation; correct? 12 A. I see that, yes. 13 Q. Are you aware of any legal holds with 14 respect to pending talc litigations being issued 15 by Johnson & Johnson or one of its -- Johnson & 16 Johnson broadly speaking, in 1989 as a result of 17 whatever pending litigation is being referred to 18 there? 19 MR. COX: Object to the form. 20 THE WITNESS: I'm not aware. 21 BY MR. SWANSON: 22 Q. Okay. Going to Page Number 4. Tell me 23 when you're there. 24 A. Yes. 25 Q. Do you see at the top there are multiple</p>	<p style="text-align: right;">Page 488</p> <p>1 Johnson & Johnson? 2 MR. COX: Object to the form. 3 BY MR. SWANSON: 4 Q. For talc litigation-related information 5 and documents? 6 MR. COX: Same objection. 7 THE WITNESS: I -- I simply don't have 8 that information. I didn't view it as my scope to 9 investigate these -- these privilege log 10 notations. 11 BY MR. SWANSON: 12 Q. Well, you understood that we were asking 13 you about Johnson & Johnson's attempt to preserve 14 evidence related to talc issues; correct? 15 MR. COX: Object to the form. 16 THE WITNESS: Yes. With respect to the 17 Fong and Leavitt cases. 18 BY MR. SWANSON: 19 Q. Okay. But you just didn't look at this 20 thing. 21 But you asked for holds; right? 22 A. Yes, I did. 23 Q. Okay. And from what you saw, you're not 24 aware of any holds before 1999; true? 25 A. That's true.</p>

<p style="text-align: right;">Page 489</p> <p>1 Q. And if you go down further at the bottom 2 of the page, you see the reference to June 22, 3 1983? 4 A. Yes. 5 Q. You see again there's another 6 communication and this one between 7 Mr. Leibensperger and a John Beidler? 8 A. Yes. 9 Q. And copied is Roger Miller. You see that? 10 A. Yes. 11 Q. And this also refers to pending and 12 anticipated talc litigation; correct? 13 A. Yes. Correct. 14 Q. Okay. So as of 1983 you're not aware of 15 any talc litigation legal holds being issued by 16 Johnson & Johnson; true? 17 MR. COX: Object to the form. 18 THE WITNESS: That's correct. 19 BY MR. SWANSON: 20 Q. Was there anything that prevented 21 Johnson & Johnson from issuing holds as to any of 22 these cases that we've talked about so far? The 23 Gambino case, the Westfall case, or any of these 24 cases that are referred to in this privilege log? 25 MR. COX: Object to the form.</p>	<p style="text-align: right;">Page 491</p> <p>1 Are you there? 2 A. Yes. 3 Q. So if you see the second reference down, 4 you see there was a communication from Roger N. 5 Miller to a Frank Bolden and other individuals? 6 A. I do. 7 Q. And the date of this communication was 8 November 7, 1977. 9 Do you see that? 10 A. Yes. 11 Q. And the privilege description says, 12 "Attachment prepared at the request of counsel 13 pursuant to pending and anticipated litigation 14 regarding talc litigation." 15 Did I read that right? 16 A. Sounds right. 17 Q. Okay. And was any legal hold issued with 18 respect to that case that you're aware of? 19 A. I'm not aware. 20 Q. Was there anything that prevented 21 Johnson & Johnson from issuing a legal hold as to 22 that talc litigation that you can think of? 23 MR. COX: Object to the form. 24 THE WITNESS: I don't know the 25 circumstances of the case. I don't know</p>
<p style="text-align: right;">Page 490</p> <p>1 THE WITNESS: So I would disagree that the 2 absence of a hold means that a hold wasn't issued. 3 I requested the holds that were available in 4 consumer talc. As to whether holds were issued in 5 these cases or the other circumstances surrounding 6 the discovery process, I can't say one way or the 7 other. I can't say that there wasn't a hold 8 issued. I simply don't know. 9 BY MR. SWANSON: 10 Q. So as Johnson & Johnson, you don't know if 11 there were holds on these issues; correct? 12 A. That's correct. 13 Q. Okay. And are you -- and that does 14 suggest an issue I need to follow up on. 15 Are you saying that legal holds don't get 16 retained by Johnson & Johnson? 17 MR. COX: Object to the form. 18 THE WITNESS: I -- I'm not saying that one 19 way or the other. 20 BY MR. SWANSON: 21 Q. Are you aware of the destruction of legal 22 holds by Johnson & Johnson? 23 A. I am not. 24 Q. Okay. If you could go to page 25 of this 25 privilege log, please.</p>	<p style="text-align: right;">Page 492</p> <p>1 whether -- what holds were issued. I don't know 2 the circumstances of the case. 3 BY MR. SWANSON: 4 Q. Now, you said that you were -- only 5 prepared hold issues related to the Fong and 6 Leavitt case or something along those lines; 7 correct? 8 A. Well, I understood that my general charge 9 was in reference to these two cases. 10 Q. Right. But you understand we're looking 11 here at a privilege log from the Fong case; 12 correct? 13 A. I understand that. 14 Q. So Johnson & Johnson already made the 15 determination that it was required to give us a 16 privilege log on documents that were related to 17 these cases; correct? 18 A. When you say "these cases," you mean -- 19 Q. Fong and Leavitt. This was issued in 20 Fong. You see that, right? 21 A. Yes. I just didn't know what "these" was 22 referring to. 23 Q. Okay. But that's a true statement; right? 24 A. Yes. 25 Q. Okay. The third item down you see there</p>

<p style="text-align: right;">Page 493</p> <p>1 was a communication from a Frank Bolden to Roger 2 Miller December 6, 1978? 3 A. Yes. 4 Q. And, again, it says, "Attachment between 5 counsel and client providing legal advice prepared 6 by counsel pursuant to pending and anticipated 7 litigation regarding talc litigation." 8 Did I read that right? 9 A. Yes. 10 Q. Okay. And with respect to that talc 11 litigation that's referring to, do you have any 12 information that a legal hold was issued? 13 A. I -- I don't know one way or the other. 14 Q. And, again, because you're saying "one way 15 or the other," you understand that you were to 16 talk about legal holds on behalf of Johnson & 17 Johnson; correct? 18 A. Yes. 19 Q. And you made an inquiry about that to 20 Johnson & Johnson; correct? 21 A. Yes. 22 Q. And they provided legal holds to you that 23 go back to 1999; true? 24 A. Yes. 25 Q. And those are the same legal holds they</p>	<p style="text-align: right;">Page 495</p> <p>1 correction. This was not Exhibit 47. Exhibit 43 2 to your deposition. 3 A. Thank you. 4 Q. You have Exhibit 43 in front of you? 5 A. I do. 6 Q. And that is correspondence on Johnson & 7 Johnson letterhead; correct? 8 A. Appears to be, yes. 9 Q. And from an R. Denton to a W. Ashton and 10 to a D. Jones; correct? 11 A. I haven't seen this document before, but I 12 agree with you those are the words in the "to" and 13 "from." 14 Q. And the date it's dated is November 23, 15 1993; correct? 16 A. Yes. 17 Q. And it says, "Subject: Trip report, talc 18 validation team meeting November 16, 1993, 19 Windsor, Vermont." Correct? 20 A. Yes. I see that. 21 Q. Okay. And I'm not going to read through 22 this whole document. But I want to skip -- first 23 of all, again, you're aware that Windsor Minerals 24 was a subsidiary of Johnson & Johnson that mined 25 talc that was used in Johnson & Johnson's baby</p>
<p style="text-align: right;">Page 494</p> <p>1 provided to us in this case; correct? 2 A. Yes. 3 Q. Okay. And those go back to 1999? 4 A. I believe I've answered that, yes. 5 Q. That's right. Okay. 6 I'm done with that one. Thank you. 7 (Whereupon, Plaintiff's Exhibit 43 was 8 marked for identification.) 9 BY MR. SWANSON: 10 Q. Mr. Mittenenthal, I'm handing you Exhibit 47 11 to your deposition. 12 Do you have that in front of you? 13 A. Yes, I do. 14 Q. Okay. And at the top, you see this is on 15 Johnson & Johnson letterhead? 16 THE REPORTER: You got the wrong number. 17 MR. SWANSON: Oh, I did? 18 THE REPORTER: You're out of order. 19 MR. SWANSON: Okay. Let's start over on 20 that, then. 21 Thank you, Early. 22 Let me redo that. I'm getting ahead of 23 myself. 24 BY MR. SWANSON: 25 Q. I'm handing you Exhibit 43. That's a</p>	<p style="text-align: right;">Page 496</p> <p>1 powder; correct? 2 MR. COX: Object to the form. 3 THE WITNESS: I have a general awareness 4 of that. 5 BY MR. SWANSON: 6 Q. And if you go to Page Number 3 of this 7 letter, you see that there's -- above that they're 8 talking about mine tour highlights. 9 Is the heading there? 10 A. You mean down on the page. 11 Q. Yeah. That's right. Two-thirds of the 12 way down the page. 13 A. Yes. 14 Q. And then in the last paragraph, there's a 15 note. 16 Do you see that? 17 A. Yes. 18 Q. And the note says -- well, you go ahead 19 and read that note, please. 20 What does the note say? 21 A. "Note: The specifics of the mining 22 operation at Hammondsville are uncertain as most 23 of the pre-Luzenac records were destroyed by the 24 mine management staff just prior to the J&J 25 divestiture and the Cyprus purchase. However,</p>

<p style="text-align: right;">Page 497</p> <p>1 several former Hammondsville miners are still 2 employed at the Ham mine, and they provided us 3 with useful information as to the nature of the 4 underground works." 5 Q. Now, you're aware from your research that 6 Windsor Minerals did testing of talc; true? 7 A. I recall that I have some notes to that 8 effect. 9 Q. And you're also aware that Hammondsville 10 was one of the main mines where the talc for 11 Johnson & Johnson's baby powder was mined; 12 correct? 13 MR. COX: Object to the form of the 14 question. 15 THE WITNESS: I don't know the specific 16 names of the mines. 17 BY MR. SWANSON: 18 Q. Okay. And do you know -- did you do any 19 research -- had you been aware of this destruction 20 of records from your research? 21 MR. COX: Object to the form. 22 THE WITNESS: I'm generally aware that 23 records are destroyed from time to time in 24 accordance with retention practices. 25 BY MR. SWANSON:</p>	<p style="text-align: right;">Page 499</p> <p>1 be in this document which I'm just seeing. 2 BY MR. SWANSON: 3 Q. And from your research on legal holds, 4 you're not aware of any legal holds being in place 5 at that time in 1989; correct? 6 MR. COX: Object to the form. 7 THE WITNESS: I'm not aware any. 8 BY MR. SWANSON: 9 Q. And the reason why there was no legal hold 10 in place at that time is because Johnson & Johnson 11 chose not to issue legal holds with respect to its 12 talc litigation up to that point; true? 13 MR. COX: Object to the form. 14 Mischaracterizes the earlier testimony. 15 THE WITNESS: I would disagree on two 16 points. Number one, I'm not -- I believe I made 17 it clear, I don't know if holds were issued or 18 not, and I'm also aware that historic cases may be 19 dispositions settled, litigated, come to their 20 conclusion. I -- I'm not aware of relevant holds 21 that would be in effect prior to 1999. 22 BY MR. SWANSON: 23 Q. And if there had been a hold in place for 24 testing records and mining records prior to 1989 25 when these records were destroyed, they would have</p>
<p style="text-align: right;">Page 498</p> <p>1 Q. Okay. That wasn't the question. I 2 specifically -- I understand that you say you 3 hadn't seen this document before, but were you 4 aware from your research that at the time of the 5 J&J divestiture in the Cyprus purchase or prior to 6 that, which was 1989, for the record, there 7 were -- that the most of the records were 8 destroyed by the mine management staff? 9 MR. COX: Object to the form. 10 THE WITNESS: Well, I can read this 11 document on first impression that it refers to 12 pre-Luzenac records being destroyed by mine 13 management. I did not investigate that issue. I 14 don't know the circumstances of the destruction 15 and under what business circumstances it was -- it 16 was conducted. 17 BY MR. SWANSON: 18 Q. Okay. Do you know of all the testing 19 records that have been there up until that point 20 had been destroyed as of 1989 that were in the 21 possession of the mine? 22 MR. COX: Object to the form. 23 THE WITNESS: Yeah. I have general notes 24 as we've gone through on testing records. I 25 cannot speak to any specific instances that would</p>	<p style="text-align: right;">Page 500</p> <p>1 been preserved and retained at that point; 2 correct? 3 MR. COX: Object to the form. 4 THE WITNESS: I mean, that -- that -- that 5 calls for some degree of speculation. I -- the 6 records you're speaking about I can't speak to 7 there what happened to them. I know that what it 8 says on the page here as you've had me read it, 9 but I have not investigated the circumstances of 10 this particular matter. 11 BY MR. SWANSON: 12 Q. You're not aware -- I mean, you keep 13 raising the specter that you just aren't aware of 14 any holds as if there could have been some holds 15 from before. But you've told us that you're 16 not -- you're not aware of any holds being 17 destroyed by Johnson & Johnson; correct? 18 A. I'm not aware of any, no. 19 Q. That's right. And you're not aware of any 20 hold releases being issued on talc litigation 21 holds; correct? 22 A. Correct. 23 MR. SWANSON: That's all I have about 24 that. Thank you. 25 MR. COX: Want to take a five-minute break</p>

<p style="text-align: right;">Page 501</p> <p>1 now, Mark?</p> <p>2 MR. SWANSON: Sure. Yeah.</p> <p>3 MR. COX: Okay.</p> <p>4 THE VIDEOGRAPHER: This marks the end of</p> <p>5 Media Number 1 in Volume III of the deposition of</p> <p>6 James Mittenenthal.</p> <p>7 Off the record at 10:07 a.m.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: On the record at</p> <p>10 10:20 a.m. This marks the start of Media Number</p> <p>11 2, Volume III in the deposition of James</p> <p>12 Mittenenthal.</p> <p>13 You may proceed, Counsel.</p> <p>14 (Whereupon, Plaintiff's Exhibit 44 was</p> <p>15 marked for identification.)</p> <p>16 BY MR. SWANSON:</p> <p>17 Q. Mr. Mittenenthal, I'm going to hand you --</p> <p>18 I'm handing your counsel first. Oh, actually, I</p> <p>19 have a separate copy there -- Exhibit 44 to your</p> <p>20 deposition.</p> <p>21 Do you have that in front of you?</p> <p>22 A. I do.</p> <p>23 Q. And you've seen this letter before,</p> <p>24 correct, been shown it in a deposition?</p> <p>25 A. I may have. I don't recall.</p>	<p style="text-align: right;">Page 503</p> <p>1 Q. Okay. You see that in the second sentence</p> <p>2 here. Second paragraph, second sentence says, "We</p> <p>3 did not begin to produce roofing-grade products</p> <p>4 from our local mines until 1970s. These mines are</p> <p>5 Clifton, Frostbite, Argonaut, Rainbow, and the</p> <p>6 Hammondsville mine."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And then you go to the second page. You</p> <p>10 see the first actual paragraph there starting</p> <p>11 with, "Testing was done on a monthly basis on the</p> <p>12 ore bodies we were mining"?</p> <p>13 A. Yes.</p> <p>14 Q. "Composites for the talc used for</p> <p>15 industrial as well as cosmetics were sent to</p> <p>16 McCrone Associates, an independent lab, for</p> <p>17 asbestiform analysis."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Now, I don't have the complaint in front</p> <p>21 of me, but are you aware of any legal holds being</p> <p>22 issued by Johnson & Johnson with respect to the</p> <p>23 Ritter case?</p> <p>24 A. I'm not aware one way or the other.</p> <p>25 MR. SWANSON: That's all I have about that</p>
<p style="text-align: right;">Page 502</p> <p>1 Q. You see that this appears to be</p> <p>2 correspondence from Luzenac America to Johnson &</p> <p>3 Johnson dated October 17, 1994?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recognize the name of the</p> <p>6 recipient, Mr. O'Shaughnessy; is that correct?</p> <p>7 A. I don't know how it's pronounced. I see</p> <p>8 that that's the recipient.</p> <p>9 Q. Right. But you've seen his name on legal</p> <p>10 holds, correct, John O'Shaughnessy for Johnson &</p> <p>11 Johnson?</p> <p>12 A. I've seen his name before.</p> <p>13 Q. And it says, "Dear Mr. O'Shaughnessy, the</p> <p>14 following is in reply to your letter dated</p> <p>15 October 4, 1994, in reference to Ritter v. Cyprus,</p> <p>16 et al."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And the Ritter case was a case in which</p> <p>20 Johnson & Johnson, or Cyprus, or Windsor Minerals</p> <p>21 was a defendant, correct? Have you heard of that</p> <p>22 case?</p> <p>23 MR. COX: Object to the form.</p> <p>24 THE WITNESS: I don't recall.</p> <p>25 BY MR. SWANSON:</p>	<p style="text-align: right;">Page 504</p> <p>1 one.</p> <p>2 Thank you.</p> <p>3 (Whereupon, Plaintiff's Exhibit 45 was</p> <p>4 marked for identification.)</p> <p>5 MR. COX: Thanks. I'm handing you.</p> <p>6 BY MR. SWANSON:</p> <p>7 Q. I'm handing you Exhibit Number 45 to your</p> <p>8 deposition.</p> <p>9 Do you have that in front of you?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And do you see that this appears to be a</p> <p>12 discovery response of Johnson & Johnson Consumer</p> <p>13 Products, Inc. to a plaintiff's request for</p> <p>14 admission in a Marlene Selby and Lowell Selby --</p> <p>15 Lowell Wayne Selby v. Johnson & Johnson case?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 And if you go to the last page, you see</p> <p>19 that these responses were verified on July 19,</p> <p>20 1994, in San Francisco, California, according to</p> <p>21 the signature?</p> <p>22 A. July 19, 1994.</p> <p>23 Q. And if you go to the second page of these</p> <p>24 responses, do you see where the plaintiffs are</p> <p>25 requesting Johnson & Johnson to admit various</p>

<p>Page 505</p> <p>1 things, including that you engage in the 2 production, manufacture, and/or packaging of 3 Johnson's Baby Powder? 4 Do you see that Request Number 1? 5 A. Yes. 6 Q. Okay. And if you look at Request Number 7 2, it says, "You are aware that the plaintiffs 8 requesting that Johnson & Johnson admit that 9 they're aware that the aspiration of Johnson's 10 Baby Powder may lead to bronchoconstriction." 11 Do you see that? 12 A. Yes. 13 Q. And then if you go to the fourth page, you 14 see where the plaintiff is asking Johnson & 15 Johnson to admit that you were aware that the 16 aspiration of Johnson's Baby Powder may lead to 17 fibrosis. 18 Do you see that? 19 A. Yes. 20 Q. Did Johnson & Johnson issue a legal hold 21 notice in the Selby case in 1994, or at any time 22 for the Selby case? 23 A. I'm not aware of whether or not a hold was 24 issued for the Selby case. 25 Q. You have no information that a hold was</p>	<p>Page 507</p> <p>1 A. Yes. 2 Q. -- back in 1983? 3 A. Yes. 4 Q. So those are consumer talc holds if there 5 was a hold related to those talc -- let me start 6 over. 7 If there was a hold related to those 8 cases, it would be a cosmetic talc litigation 9 hold; true? 10 A. True. 11 Q. Okay. And you asked for all those; right? 12 A. Yes, I did. 13 Q. And the oldest one you got is 1999? 14 A. Correct. 15 Q. And you're not aware of any hold releases 16 ever being issued by Johnson & Johnson related to 17 cosmetic talc litigation; correct? 18 A. Correct. 19 Q. Or any other talc litigation; true? 20 A. I have not seen any releases. 21 Q. Okay. That's all I have about that. 22 Thank you. 23 I want to ask you a few questions about 24 Johnson & Johnson International, and I probably 25 should have asked some of these in the context of</p>
<p>Page 506</p> <p>1 issued; correct? 2 A. One way or the other. 3 Q. When you say "one way or the other," 4 again, you're not aware of any holds being 5 destroyed, correct, by Johnson & Johnson? 6 A. Correct. 7 Q. And you're not ahold -- aware of a hold 8 release ever being issued by Johnson & Johnson 9 related in any way to talc litigation; correct? 10 A. I'm not aware that the -- of releases to 11 the holds that I requested. In other words, the 12 1999 through 2017 holds that I requested I am not 13 aware of releases applicable to those holds. 14 Q. Are you aware of releases applicable to 15 other holds related to talc litigation for 16 Johnson & Johnson? 17 A. I requested all holds applicable to 18 cosmetic talc. I -- I don't recall if I requested 19 every release ever issued. 20 Q. Okay. Well, this is clearly cosmetic talc 21 issue, right, the Selby case; true? Johnson's 22 Baby Powder is what they're talking about. 23 A. Yes. 24 Q. And so was the Gambino case. Remember 25 that was a talcosis case --</p>	<p>Page 508</p> <p>1 what we were doing yesterday, but I've looked at 2 the holds again in preparation for today, and we 3 went over them in some detail yesterday, and I'd 4 asked you questions about recipients of those 5 legal holds for talc -- in talc litigation going 6 back to 1999. 7 And do you have any information that 8 Johnson & Johnson International ever received any 9 of those holds? 10 A. As an entity? 11 Q. Yes. 12 A. I -- I don't have information with respect 13 to that. I do understand that the 2017 hold was 14 directed at people in international entities. 15 Q. And that was at the first hold that you're 16 aware of that was directed to individuals at 17 Johnson & Johnson International? 18 MR. COX: Object to the form. 19 THE WITNESS: Well, I'm not -- in terms of 20 the precise name of the entity, I would have to 21 double-check those entities. But I -- it's 22 certainly in international locations for over -- 23 overseas or OUS locations. That is the first ones 24 I am aware of. 25 BY MR. SWANSON:</p>

<p>Page 509</p> <p>1 Q. I see. And I should have been clear in my 2 question. My understanding is, Mr. Mittenhal, 3 that there is -- there is an operating company of 4 Johnson & Johnson called "Johnson & Johnson 5 International." 6 Are you aware of that? 7 A. Well, I'm aware that the -- that the names 8 of the entities change over time, and so I just 9 want to make sure I'm using the right terminology 10 that befits the time and place. 11 Q. Let me -- let me ask it a little more 12 precisely. Try to. Are you aware of an entity 13 called "Johnson & Johnson International" that was 14 the recipient as an entity of legal holds? 15 A. I'm not aware. 16 Q. Are you aware of individuals who worked 17 for an entity called -- an entity or division 18 called "Johnson & Johnson International" who 19 received any of the talc litigation legal holds? 20 A. I am aware that in 2017 people in -- that 21 worked for international elements of the 22 organization received litigation holds. 23 Q. When you say "worked for international 24 elements of the organization," are you talking 25 about people who worked domestically or, for</p>	<p>Page 511</p> <p>1 not asking generally about operating units outside 2 the United States like, you know, J&J Hong Kong, 3 J&J Philippines, okay, so just keep -- let's keep 4 that separate. 5 From the research that you've done, can 6 you provide any information about what search -- 7 inquiry search was done for documents that were 8 documents that were kept, produced, retained by 9 Johnson & Johnson International? 10 MR. COX: Object to the form. 11 THE WITNESS: I -- I can't speak to the -- 12 to the entities per se. I know that my notes 13 reflect the fact that there were documents from 14 international operations that were housed in the 15 United States and were searched as part of this 16 effort. 17 BY MR. SWANSON: 18 Q. Okay. And would that be, for example, 19 when we were talking about in the first volume of 20 your deposition about the search that was done 21 through the Philippines documents you had -- there 22 was something in your notes about a hundred boxes 23 being selected and then a Skadden associate going 24 through those boxes and not really finding 25 anything.</p>
<p>Page 510</p> <p>1 example, people in the Philippines like we talked 2 about yesterday? 3 A. The latter. People who were physically 4 located in the Philippines or Hong Kong. 5 Q. Do you have any awareness that the most -- 6 and you're talking about the most recent hold -- 7 the current hold in asbestos cases; correct? 8 A. Yes. 9 Q. Okay. Are you aware of any individuals at 10 a domestic unit of Johnson & Johnson that's called 11 "Johnson & Johnson International" receiving legal 12 holds? 13 A. A domestic unit that's called 14 "International"? 15 Q. Yes. 16 A. I -- I wouldn't know that one way or the 17 other. 18 Q. The way Chris is smiling it might be that 19 I needed to do more research before I asked that 20 question, but. 21 So are you -- did you -- and I don't want 22 to redo what we've done with respect to your notes 23 already, but with -- so keeping in mind that I'm 24 just asking about an operating unit or division 25 called "Johnson & Johnson International," and I'm</p>	<p>Page 512</p> <p>1 Do you remember that generally? 2 A. I do. 3 Q. And is that what you're referring to as a 4 search about an "outside of the U.S." entity but 5 the search is actually physically being done in 6 the United States in an archive in the 7 United States? 8 A. Well, that hundred-box search -- that 9 hundred-box search was actually performed 10 overseas. So I am actually talking about other 11 documents that were related to international 12 operations but the documents themselves were 13 stored in U.S. locations and searched there. 14 Q. I don't know if this will help, but the 15 Johnson & Johnson International entity or 16 operating unit is located in Brunswick, New 17 Jersey. 18 Does that help you at all in terms of 19 whether or not what information that you have 20 about that from your research? 21 A. You know, in my research, I understand 22 that -- and I have a list of company sources that 23 were searched that was -- that was -- you know, 24 we've talked about the archive, the various 25 noncustodial and custodial sources that were</p>

<p>1 listed with my materials. To the extent that they 2 were available to be searched, regardless of 3 whether they were part of an international entity 4 or a U.S. entity, I -- they were all searched, to 5 my understanding. 6 Q. Well -- 7 MR. SWANSON: I'm going to move to strike 8 that. 9 I just -- it's a very particular question. 10 I'm trying to get at. 11 BY MR. SWANSON: 12 Q. Which is what information specifically do 13 you have about the operating unit, Johnson & 14 Johnson International, which is in New Brunswick, 15 New Jersey, searches being done of their 16 documents, documents that they retained or 17 archived or had on their computers? And if you 18 have a list of sources that you're referring to 19 that we can refer to -- if it helps you at all, 20 you know, let's look at it. 21 A. Well, I'm certainly going to look at the 22 list of noncustodial sources and see if there's 23 anything specifically mentioned about company 24 entities. 25 Q. For the record, that's a -- Exhibit Number</p>	<p>Page 513</p> <p>1 information in the U.S. relating to international 2 facts or data. 3 So, for instance, the TrackWise system, 4 the SCEPTRE system, other business systems were 5 global in nature so that if I put something into 6 that system in the Philippines or Hong Kong or 7 China, it would have been stored essentially in 8 the -- in the U.S. system. 9 Q. Do you know as of what year that was being 10 stored in those databases, the first year? 11 A. You know, I have a chart that I've 12 assembled that we marked yesterday. From what I 13 know about those various business systems, the 14 objective was not to necessarily understand when a 15 system went global, but there are systems listed 16 there that have international usage. 17 Q. Let me -- let me just try to cut it short 18 because I don't want to... 19 Do any of those systems go back to the 20 1970s? In other words, were any of those systems 21 utilized in the 1970s? 22 A. I have information in my notes that 23 information may have been scanned and brought 24 forward. There were not a lot of electronic 25 systems in the '70s -- there were some -- but that</p> <p>Page 515</p>
<p>1 4 to your deposition; is that right? 2 A. That's right. I just have a general 3 understanding that all documents that would have 4 been available in the U.S. and potentially 5 relevant were subject to search. 6 MR. SWANSON: Again, I'm going to move to 7 strike as nonresponsive. 8 THE WITNESS: You know, I'm looking, for 9 instance, on page 2 of Exhibit 4, contracts from 10 the international contracts database. I'm just 11 seeing an international reference there. I -- 12 I... 13 BY MR. SWANSON: 14 Q. Can you provide any additional information 15 about any search done -- other than your general 16 impression that searches were done of all U.S. 17 sources, do you have any information specifically 18 as it relates to searches done with respect to 19 Johnson & Johnson International, that you 20 associate with Johnson & Johnson International? 21 A. Well, I have in my notes, for instance, 22 that various people who I interviewed in 23 international locations who I presume to be part 24 of an international organization utilized 25 enterprise global systems that would have stored</p>	<p>Page 514</p> <p>1 certain information was carried forward, brought 2 into systems that have been migrated forward in 3 our -- so I would not be surprised if there were 4 systems today that had some information from those 5 earlier times. 6 For instance, I know that there has been 7 some scanning of -- occasional scanning of lab 8 notebooks. So those were in paper form. Those 9 went back many years. Those have now been brought 10 forward, some of them, at least, into electronic 11 systems. 12 Q. I appreciate what you're saying, which is 13 some of the information got transferred forward 14 from a long time ago paper -- paper-type documents 15 from like the 1970s; correct? 16 But would those database systems that 17 you're talking about being in use for Johnson & 18 Johnson -- for domestic Johnson & Johnson's 19 companies keeping track of and having 20 documentation from Johnson & Johnson operating 21 units outside the United States, those are recent 22 platforms, correct, and the -- in terms of 23 preserving those documents; correct? 24 MR. COX: Object to the form. 25 BY MR. SWANSON:</p> <p>Page 516</p>

<p>Page 517</p> <p>1 Q. They don't go back to the 1970s.</p> <p>2 A. Well, certainly many of the systems I</p> <p>3 investigated were in paper form in the '70s, and</p> <p>4 I -- it would be a one-by-one investigation to</p> <p>5 look at complaints, adverse events, the call</p> <p>6 center, the document control systems, the</p> <p>7 archiving system. I mean, each of those has a</p> <p>8 different story as to when it was -- what system</p> <p>9 went live when and what was migrated from a</p> <p>10 previous system where paper filings would. So it</p> <p>11 would be -- it's not a monolithic answer. Each</p> <p>12 system would have an answer as to...</p> <p>13 Q. I understand. But what was -- you</p> <p>14 referred to some current systems. Since I don't</p> <p>15 have a handle on these names when you first</p> <p>16 answered the question, what were those systems you</p> <p>17 referred to?</p> <p>18 A. The first ones I mentioned TrackWise.</p> <p>19 Q. TrackWise. Were any of those in use --</p> <p>20 was TrackWise in use by Johnson & Johnson in the</p> <p>21 1970s or 1980s, 1990s, or even the early 2000s?</p> <p>22 A. I believe TrackWise -- TrackWise went live</p> <p>23 relatively recently in about 2009. Well, ten</p> <p>24 years, nine years ago.</p> <p>25 Q. Okay.</p>	<p>Page 519</p> <p>1 Did you investigate what systems were in</p> <p>2 use at either of those locations, the Philippines</p> <p>3 or Hong Kong in the 1960s or '70s or '80s in terms</p> <p>4 of database systems or the systems for organizing</p> <p>5 and preserving documents?</p> <p>6 A. I did not catalogue the systems in use at</p> <p>7 that time. I understood that what was available</p> <p>8 from the time frame that had been preserved from</p> <p>9 that time was in paper form or in a storage form</p> <p>10 that it could be put in a box and had been stored</p> <p>11 in a facility, and that that's the material that</p> <p>12 was -- that was -- that was searched and that</p> <p>13 there were indexes to that material.</p> <p>14 I don't know that there were any</p> <p>15 electronic systems in use then. I did not</p> <p>16 catalogue that.</p> <p>17 Q. We talked about this a little bit so I</p> <p>18 don't want to spend a lot of time on this, but</p> <p>19 this hundred boxes that got pulled, that was</p> <p>20 pulled based on key words, right, according to</p> <p>21 your notes, for the Philippines?</p> <p>22 A. Yes. And what that indicated was that</p> <p>23 when they did the search and came up with</p> <p>24 nothing -- nothing based on the key word search of</p> <p>25 the index, they retrieved -- it may have been</p>
<p>Page 518</p> <p>1 A. Approximately when -- around the time that</p> <p>2 certain operations were consolidated and a global</p> <p>3 talc specification was created. So there was a</p> <p>4 lot of that activity in that 2009 time frame,</p> <p>5 including, as I recall, the conversion to the</p> <p>6 TrackWise system.</p> <p>7 Q. And what was the system before TrackWise?</p> <p>8 A. I've got to check my notes.</p> <p>9 Q. Okay. I'm going to have you hold that</p> <p>10 thought.</p> <p>11 Let me ask. I think I do want to look at</p> <p>12 your notes for a moment here and ask you about --</p> <p>13 a little bit more about the Philippines.</p> <p>14 Do you have your paginated notes? It's</p> <p>15 Exhibit 26 and I think for the most part, those</p> <p>16 are -- actually, it would be over there, I</p> <p>17 believe, wouldn't it?</p> <p>18 If you go to page 64 in the paginated</p> <p>19 notes, your paginated notes, which is Exhibit 26.</p> <p>20 You see here where it's -- there's a summary of</p> <p>21 your discussions with, was it Pamela Downs? Let's</p> <p>22 see, yes.</p> <p>23 A. Yes.</p> <p>24 Q. Pam Downs regarding searches in overseas</p> <p>25 location including the Philippines, Hong Kong.</p>	<p>Page 520</p> <p>1 101 boxes -- it was approximately a hundred</p> <p>2 boxes -- to go through to confirm from a sampling</p> <p>3 standpoint.</p> <p>4 Q. I'm going to cut you off. I just asked</p> <p>5 you a real simple question and you gave me the</p> <p>6 full explanation again. And we talked about it</p> <p>7 last time, so I've just got a couple little pieces</p> <p>8 here to cover.</p> <p>9 A. Okay.</p> <p>10 Q. I don't mean to be rude or anything, but I</p> <p>11 want to move things along and I'm sure you do,</p> <p>12 too.</p> <p>13 Okay. So the key words that were</p> <p>14 searched, were those only in English?</p> <p>15 A. I don't know if the key words were only in</p> <p>16 English. I have an understanding that the -- that</p> <p>17 there was a general use of English for business</p> <p>18 documents and that there were English speakers</p> <p>19 there in the records staff who would have known if</p> <p>20 there were other foreign language issues. I don't</p> <p>21 know if there were other key words added in any</p> <p>22 other languages.</p> <p>23 Q. Well, were the key words the same word --</p> <p>24 these are different key words from the ERMS key</p> <p>25 words or the E-R-M-S key words that we spoke about</p>

<p style="text-align: right;">Page 521</p> <p>1 last time that are in Exhibit 6 to your 2 deposition? 3 A. You know, I think the terms may have been 4 the same, but because it was a different system -- 5 it was an index, it may have been an Excel index 6 or some other different format than ERMS -- and 7 therefore, the precise way it was searched may 8 have varied. I understand that the intent was to 9 search the same type of information. 10 Q. Okay. But you don't know if there were -- 11 whether or not there were any non-English words 12 that were used; correct? 13 A. That's correct. 14 Q. Did you -- has this been produced to us, 15 this index of key words? 16 MR. COX: Object to the form. 17 THE WITNESS: I'm not aware one way or the 18 other. 19 BY MR. SWANSON: 20 Q. You didn't produce it for your deposition; 21 true? 22 A. Correct. 23 Q. Now, these boxes that were selected, a 24 hundred boxes, out of how many boxes were those 25 selected?</p>	<p style="text-align: right;">Page 523</p> <p>1 A. Can you reference me to where we are? 2 Q. "Found none. No" -- "no boxes needed" -- 3 it says, "No boxes needed to be opened." What was 4 that -- that was based on what? 5 A. The searching of the index. 6 Q. Okay. And what -- and I apologize if I 7 asked this. Was -- were the searches in the Hong 8 Kong documents only done in English, as far as you 9 know? 10 A. I -- I don't know. I do know that there 11 was a committee of people involved with the 12 search, and that committee would list people who 13 would be aware of what documents would be in 14 English and in other languages, and the search 15 would have been calibrated accordingly. 16 MR. SWANSON: Move to strike as 17 nonresponsive. 18 BY MR. SWANSON: 19 Q. Would you agree that if the search terms 20 were English only, then English documents -- 21 documents in English would be more likely to come 22 up; right? 23 A. I -- I'm not sure I would say that because 24 you have the index and you have the body of the 25 documents, and the index terms could be in</p>
<p style="text-align: right;">Page 522</p> <p>1 A. I -- I don't know the total box count in 2 all these facilities. 3 Q. That was not a random sampling; correct? 4 A. It was -- it was chosen by the attorneys. 5 The methodology I'm not -- I'm not aware of. 6 Q. And is it true that any documents based on 7 the search -- well, whatever documents there were 8 there still -- strike that. 9 With respect to the Hong Kong search, 10 again, it says there was "inbox site index." 11 Has that been produced? 12 A. I'm not aware of one way or the other. 13 Q. Okay. "Put together committee as per 14 above." 15 What does that mean? 16 A. So, there were a list of people associated 17 with the search, and those are actually listed in 18 the later document, because these searches were 19 prior -- prior to the specific Fong and Leavitt 20 searches. 21 So my recent exhibit list additional 22 efforts and list out those people. 23 Q. Okay. And we can pull that up if we need 24 to, but let me -- let me ask you: It says that no 25 responsive documents were found; correct?</p>	<p style="text-align: right;">Page 524</p> <p>1 English, the document could be in another 2 language. I don't have the particulars on how the 3 index was -- was developed. I have an 4 understanding that the business language in use 5 would have been English, but I don't know the 6 nature of how the boxes were described and which 7 languages were used. 8 Q. And when you say you have an understanding 9 the business language being used, you mean 10 English? 11 A. Yes. 12 Q. For business? 13 A. Yes. 14 Q. Is that what you're saying? 15 A. English was commonly used in the business, 16 yes. 17 Q. So Johnson & Johnson -- and I think you 18 referred to that in the Philippines, too; correct? 19 A. Yes. 20 Q. So Johnson & Johnson's operating 21 companies -- in Philippines, in Hong Kong, 22 Johnson & Johnson was using English in those for 23 the most part; is that what you're saying? 24 A. I would say that English was widely used. 25 I don't -- I can't speak to the ratios or the</p>

<p style="text-align: right;">Page 525</p> <p>1 official adoption.</p> <p>2 Q. Okay. Right. So but would you agree that</p> <p>3 manufacturers and suppliers to Johnson & Johnson</p> <p>4 in those foreign countries might not be using</p> <p>5 English?</p> <p>6 A. I wouldn't want to speculate on how they</p> <p>7 communicated.</p> <p>8 Q. Now, with respect to your subsequent</p> <p>9 discussion with Pam Downs and Laura -- I --</p> <p>10 Giacino, or whatever her name was, did you learn</p> <p>11 anything more in terms of whether or not any</p> <p>12 documents were actually located at the Hong Kong</p> <p>13 location?</p> <p>14 A. Well, I can make a blanket statement that</p> <p>15 what I did learn was in my notes and I --</p> <p>16 Q. Well, let's go to your notes, then, and</p> <p>17 let's pull that -- I don't remember what exhibit</p> <p>18 that is offhand, but I believe --</p> <p>19 A. It's right on top here, actually.</p> <p>20 Q. Oh, it is.</p> <p>21 A. 20.</p> <p>22 Q. Okay. Great. And let's -- since we've</p> <p>23 got this in front of us, it looks like that's on</p> <p>24 the bottom of page 2 there's a reference to Hong</p> <p>25 Kong; correct?</p>	<p style="text-align: right;">Page 527</p> <p>1 actually --</p> <p>2 Q. Do you know what their instructions or</p> <p>3 training was in terms of what they were looking</p> <p>4 for, the people who actually looked at the offsite</p> <p>5 storage indexes or any electronic listings?</p> <p>6 A. Well, I don't know about their training.</p> <p>7 I know that they -- they were looking for the</p> <p>8 items detailed in the search criteria.</p> <p>9 Q. And what was the year limit put on the</p> <p>10 search?</p> <p>11 A. I don't know that they had a year limit.</p> <p>12 I know that they were aware of the time frame, as</p> <p>13 I recall, from 1970 to '84 -- or '71 -- '70 to</p> <p>14 '84.</p> <p>15 Q. That's all I've got about that one.</p> <p>16 Although you probably hold on to that one because</p> <p>17 you may look at it again in a moment.</p> <p>18 Do you know, with respect to the Korean</p> <p>19 talc that was being supplied to Johnson & Johnson</p> <p>20 Hong Kong and Johnson & Johnson Philippines,</p> <p>21 whether or not any searches for documents related</p> <p>22 to that talc supply in either Leavitt or Fong</p> <p>23 cases, or any other cases, for that matter, were</p> <p>24 done in English, and what languages they were done</p> <p>25 in? Let me ask you that way.</p>
<p style="text-align: right;">Page 526</p> <p>1 A. Yeah. That is the first Fong reference.</p> <p>2 Q. Okay. And is it correct that no documents</p> <p>3 were located with respect to Hong Kong?</p> <p>4 A. Yes. So this -- this is in Category 4,</p> <p>5 and if I reference what that means, it says that</p> <p>6 this type of search was a company source that had</p> <p>7 not been searched before. So there were</p> <p>8 certain -- certain searches conducted in new</p> <p>9 areas, new searches, entirely new searches, and</p> <p>10 that was -- that further yielded nothing in that</p> <p>11 time frame.</p> <p>12 Q. Do you know what the terms -- have you</p> <p>13 seen the offsite storage index and any electronic</p> <p>14 listings with respect to Hong Kong?</p> <p>15 A. Have I -- have I seen it?</p> <p>16 Q. Yeah.</p> <p>17 A. No.</p> <p>18 Q. Do you know what -- how detailed it is?</p> <p>19 A. I have not -- I have not seen it.</p> <p>20 Q. Do you know what search -- what search</p> <p>21 terms -- what specific -- do you know the specific</p> <p>22 individuals who did -- who looked at the storage</p> <p>23 indexes, who they were?</p> <p>24 A. No. I know Ms. Downs and attorneys were</p> <p>25 part of the process. I don't know who -- who</p>	<p style="text-align: right;">Page 528</p> <p>1 MR. COX: Object to the form.</p> <p>2 THE WITNESS: I don't know the range of</p> <p>3 languages that were used in the search.</p> <p>4 BY MR. SWANSON:</p> <p>5 Q. Do you know whether or not the talc</p> <p>6 supplier from Korea's talc supply documents are in</p> <p>7 Korean or some other language?</p> <p>8 A. I don't have that information. I did not</p> <p>9 research that.</p> <p>10 Q. And you're aware from your review of the</p> <p>11 discovery and the responses to discovery in the</p> <p>12 Fong and Leavitt cases that the plaintiffs broadly</p> <p>13 asked for results of testing and testing documents</p> <p>14 related to talc that went into Johnson's Baby</p> <p>15 Powder, including from that manufactured overseas;</p> <p>16 correct?</p> <p>17 MR. COX: Object to the form.</p> <p>18 THE WITNESS: I'm generally aware that</p> <p>19 test results were requested.</p> <p>20 BY MR. SWANSON:</p> <p>21 Q. Okay. And we have been provided, and I</p> <p>22 don't know if you're aware of it, some Johnson &</p> <p>23 Johnson worldwide talc surveys from the late 1970s</p> <p>24 and early 1980s.</p> <p>25 Have you seen those documents? And I</p>

<p style="text-align: right;">Page 529</p> <p>1 believe those may have been initially obtained or 2 provided in the De La Cruz case? 3 A. I'm aware of those documents. 4 Q. Other than those documents, are you aware 5 of the existence of any other talc testing-related 6 documents for the testing of Korean talc for 7 asbestos? 8 A. I'm not specifically aware one way or the 9 other. 10 Q. And I believe I asked this yesterday, but 11 you're not aware of a legal hold ever being issued 12 with respect to Korean underlying testing 13 documents, testing of Korean talc; true? 14 MR. COX: Object to the form. 15 THE WITNESS: I'm not aware of a -- of 16 a... 17 Actually, I should rephrase. What I 18 believe I said yesterday was that I'm not aware if 19 there were holds sent to any international 20 locations prior to 2017. 21 BY MR. SWANSON: 22 Q. Fair enough. 23 Are there any MSDS sheets that Johnson & 24 Johnson has for Korean talc? I haven't seen any, 25 but do you know from your research are there MSDS</p>	<p style="text-align: right;">Page 531</p> <p>1 MR. SWANSON: Might as well go ahead and 2 mark it, Exhibit 46 to your deposition. 3 (Whereupon, Plaintiff's Exhibit 46 was 4 marked for identification.) 5 BY MR. SWANSON: 6 Q. Do you have that in front of you? 7 A. Yes, I do. 8 Q. And you see this is defendant Johnson & 9 Johnson's June 26, 2018, Amended Responses to 10 Plaintiff's Request for Production of Documents, 11 Set 3; correct? 12 A. Yes. 13 Q. And if you go to the Request Number 29 -- 14 Request Number 29 and 30, you see that 29 asks for 15 all the results of testing of talc or talc ore 16 that was used for Johnson & Johnson cosmetic talc 17 products from '65 -- 1965 to the present. 18 Do you see that? 19 A. Yes. 20 Q. And Number 30 asked essentially the same 21 question for Johnson & Johnson's talc products, 22 right, testing or testing results of Johnson & 23 Johnson cosmetic talc products 1965 to the 24 present; correct? 25 A. Yes.</p>
<p style="text-align: right;">Page 530</p> <p>1 sheets for Korean talc? 2 A. I mean, I'm just going to quickly tab 3 through the noncustodial sources and see if I see 4 any references to it. I don't recall any 5 references to it. 6 Q. Just for the record, you're looking at 7 Exhibit 4? 8 A. That's right. 9 Yeah. I can't tell from here. I'm not 10 aware of any. 11 Q. Okay. You saw from your review of the 12 discovery that the plaintiffs again asked for -- 13 and we can go through the discovery, but I think 14 you've looked at it, so if we need to, we will -- 15 but that the plaintiffs have asked Johnson & 16 Johnson, in the Leavitt case specifically, for all 17 talc testing results going back to 1965 to the 18 present. 19 Did you see that? 20 A. I'm aware of historical requests for 21 testing. 22 Q. Do you -- are you aware in the Leavitt 23 case those went out pretty far; correct? 24 Let me see if I can pull this out real 25 quickly and show it to you.</p>	<p style="text-align: right;">Page 532</p> <p>1 Q. And you see that Johnson & Johnson has 2 said that it has produced all documents; correct? 3 MR. COX: Object to the form. 4 THE WITNESS: I see that. 5 BY MR. SWANSON: 6 Q. Okay. It says it's identified and 7 produced all documents in its possession, custody, 8 or control. 9 So -- and these are verified; right? If 10 you go to the last page or the second-to-last 11 page, you see the verification; correct? 12 A. Yes. 13 Q. Who verified those? 14 A. Tina French. 15 Q. And you know who Tina French is; correct? 16 A. Yes. 17 Q. And she's empowered by Johnson & Johnson 18 to verify those; correct? 19 A. Yes. 20 Q. And so if -- do you have information with 21 respect to the level of completeness of -- let me 22 see if I can ask this differently. Do you know of 23 all the testing that would -- that was done from 24 1965 to the present that meets that description, 25 how much of those testing results were produced in</p>

<p style="text-align: right;">Page 533</p> <p>1 the Leavitt case?</p> <p>2 MR. COX: Object to the form.</p> <p>3 BY MR. SWANSON:</p> <p>4 Q. And I'm not talking about the documents</p> <p>5 that just exist now but of all the testing that</p> <p>6 was done from '65 to the present, those testing</p> <p>7 results, how many of those have actually been</p> <p>8 produced?</p> <p>9 MR. COX: Objection.</p> <p>10 BY MR. SWANSON:</p> <p>11 Q. What percentage, anything like that.</p> <p>12 MR. COX: Object to the form. Beyond the</p> <p>13 scope of the notice.</p> <p>14 THE WITNESS: I'm not sure how I would</p> <p>15 have -- be able to understand what percentage were</p> <p>16 produced. Certainly the ones were produced that</p> <p>17 were -- the company could find.</p> <p>18 BY MR. SWANSON:</p> <p>19 Q. Right. So you -- right. And that's fine.</p> <p>20 And you can say you don't know. I mean, that's a</p> <p>21 perfectly fine answer in a deposition, as you</p> <p>22 know.</p> <p>23 Okay. But they produced everything they</p> <p>24 had, according to their diligent search, according</p> <p>25 to that answer, right?</p>	<p style="text-align: right;">Page 535</p> <p>1 that it can find to identify it, or review it and</p> <p>2 produce it. I don't know how one would go about</p> <p>3 knowing what percentage of a hypothetical,</p> <p>4 historical population would have -- would have</p> <p>5 been calculated.</p> <p>6 BY MR. SWANSON:</p> <p>7 Q. Okay. So, to the extent that testing</p> <p>8 results have not been produced by Johnson &</p> <p>9 Johnson, that -- where the testing was done and at</p> <p>10 some point there was a testing result, that would</p> <p>11 be the result of destruction of the testing</p> <p>12 results; correct?</p> <p>13 MR. COX: Object to the form.</p> <p>14 THE WITNESS: I don't think that</p> <p>15 inevitably follows a "to be." That could be a --</p> <p>16 that's a potential reason for why something wasn't</p> <p>17 produced if it was a disposition in the course of</p> <p>18 business.</p> <p>19 BY MR. SWANSON:</p> <p>20 Q. Right. Which means it would be -- and if</p> <p>21 those documents -- and we -- I'm not going to go</p> <p>22 back into all the holds and the retention</p> <p>23 schedules, but we talked about this yesterday. If</p> <p>24 something is not under a hold and it's no longer</p> <p>25 under retention by the retention schedule, it's</p>
<p style="text-align: right;">Page 534</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So if any document -- if any</p> <p>3 testing documents are missing that there is reason</p> <p>4 to believe existed, those documents would have</p> <p>5 been destroyed; correct?</p> <p>6 MR. COX: Object to the form.</p> <p>7 THE WITNESS: I -- I didn't understand the</p> <p>8 last question, I'm sorry.</p> <p>9 BY MR. SWANSON:</p> <p>10 Q. Well, hypothetically -- you said they</p> <p>11 produced all the documents in their possession,</p> <p>12 custody, or control. And they said that under</p> <p>13 oath; Johnson & Johnson said that and you've</p> <p>14 verified that.</p> <p>15 My question is, if -- first of all, can</p> <p>16 you say what percentage of the documents</p> <p>17 reflecting all testing results from those periods</p> <p>18 were produced, whether it was more or less than 5</p> <p>19 percent?</p> <p>20 MR. COX: Object to the form.</p> <p>21 THE WITNESS: I'm in no position to --</p> <p>22 based on research or even research that I could</p> <p>23 do, I don't know how I could say what a percentage</p> <p>24 would be. I think the company's methodology, as</p> <p>25 in much discovery, is to look for the information</p>	<p style="text-align: right;">Page 536</p> <p>1 actually supposed to be disposed of; correct?</p> <p>2 MR. COX: Object to the form.</p> <p>3 THE WITNESS: It becomes a candidate for</p> <p>4 destruction.</p> <p>5 BY MR. SWANSON:</p> <p>6 Q. Right. And if, for example, a company</p> <p>7 like Johnson & Johnson has a cleanout policy</p> <p>8 annually that's a mandatory possible -- procedure,</p> <p>9 then, in fact, it would get destroyed; true?</p> <p>10 MR. COX: Object to the form.</p> <p>11 THE WITNESS: To the extent that it was</p> <p>12 agreed upon and signed off on, yes.</p> <p>13 BY MR. SWANSON:</p> <p>14 Q. I'd like to ask you some questions about</p> <p>15 the Legacy collections of documents. And we</p> <p>16 touched on this a little bit in the first volume</p> <p>17 of your deposition. And let me ask you about --</p> <p>18 first of all, are those listed in noncustodial</p> <p>19 sources, I believe? Is that right?</p> <p>20 A. Yes, they are, which is Exhibit 4.</p> <p>21 Q. Okay. And you've got some information in</p> <p>22 your notes about this.</p> <p>23 Did you prepare this document,</p> <p>24 "Noncustodial sources"?</p> <p>25 A. I did not.</p>

<p style="text-align: right;">Page 537</p> <p>1 Q. It was prepared by counsel?</p> <p>2 A. Yes.</p> <p>3 Q. So looking at page 2 of Exhibit 4, it</p> <p>4 lists Legacy 1 and some information about that;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And Legacy 1 was a document collection of</p> <p>8 talc-related documents that was put together in --</p> <p>9 as a result or in connection with a 2009 South</p> <p>10 Dakota action, Berg v. Johnson & Johnson; correct?</p> <p>11 A. That's my read of the description, yes.</p> <p>12 Q. And that was a lawsuit alleging ovarian</p> <p>13 cancer as a result of the use of Johnson's Baby</p> <p>14 Powder; correct?</p> <p>15 A. By its description.</p> <p>16 Q. Do you -- do you know -- was a legal hold</p> <p>17 issued in that case? I think actually we may have</p> <p>18 seen -- is this Berg? Yeah, okay. I think we did</p> <p>19 see Berg from 2009. Yeah. Okay.</p> <p>20 So I think I know the answer to that.</p> <p>21 So that was a 2009 hold that we looked; is</p> <p>22 that right?</p> <p>23 A. Yeah. You know, I'm going to actually</p> <p>24 just reach over and grab my list of holds so I've</p> <p>25 got that in front of me.</p>	<p style="text-align: right;">Page 539</p> <p>1 collection were done back in 2009 or '10 or</p> <p>2 whenever that was actually effectuated.</p> <p>3 Do you have information about that?</p> <p>4 A. I -- I don't. I have it represented that</p> <p>5 that was a monolithic collection that was</p> <p>6 preserved and carried forward. I don't have the</p> <p>7 search criteria for -- for that particular matter.</p> <p>8 Q. Do you know how sources of documents were</p> <p>9 identified?</p> <p>10 A. In Legacy 1?</p> <p>11 Q. Yes.</p> <p>12 A. No. As I mentioned, that was presented to</p> <p>13 me as a -- as a monolithic set. I mentioned in</p> <p>14 the first day that I had gone through and reviewed</p> <p>15 certain -- sampled and reviewed certain documents</p> <p>16 in a litigation review tool. I -- I pulled up a</p> <p>17 few Legacy 1 documents just to -- just to see them</p> <p>18 and get familiar with them. I certainly couldn't</p> <p>19 speak to where all -- they all came from.</p> <p>20 Q. And it looks like -- interesting. I'm</p> <p>21 looking at these other Legacy collections and I</p> <p>22 think I'll just jump over to some of these others.</p> <p>23 You see -- do you know why Legacy 4, for</p> <p>24 example, was -- how the numbering for the Legacy</p> <p>25 collections came about? For example, there were</p>
<p style="text-align: right;">Page 538</p> <p>1 Q. Oh, yeah. So what exhibit is that for the</p> <p>2 record?</p> <p>3 A. That is 21.</p> <p>4 Q. Thank you.</p> <p>5 And the Berg case was under a legal hold;</p> <p>6 is that right?</p> <p>7 A. I have a legal hold from December 15th,</p> <p>8 '09.</p> <p>9 Q. And a collection of documents was put</p> <p>10 together at that time?</p> <p>11 A. At some point it was put together.</p> <p>12 Q. Do you know -- do you remember the last</p> <p>13 time we talked about in some detail how the</p> <p>14 various inquiry and search steps related to</p> <p>15 documents that had become part of the sort of -- I</p> <p>16 forget what we're calling it, but the large sort</p> <p>17 of omnibus talc collection of documents, and we</p> <p>18 talked about those procedures with respect to the</p> <p>19 1600 boxes being pulled and the ERMS and the</p> <p>20 filtering terms.</p> <p>21 You remember that?</p> <p>22 A. Yes.</p> <p>23 Q. And what I'd like to ask you is about</p> <p>24 what -- how the searches were done, the inquiry</p> <p>25 and searches related to Legacy -- the Legacy 1</p>	<p style="text-align: right;">Page 540</p> <p>1 some documents, it appears from the description</p> <p>2 here that are part of Legacy 4, that were gathered</p> <p>3 in the Ritter case.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know when those were gathered?</p> <p>7 A. No, I do not.</p> <p>8 Q. It says "primarily collected in connection</p> <p>9 with the Ritter case."</p> <p>10 And then you were aware of the Coker case</p> <p>11 and the collection that came out of that; is that</p> <p>12 right? That's Legacy Number 2?</p> <p>13 A. That's right.</p> <p>14 Q. Does the -- and I know you don't have any</p> <p>15 holds prior to 1999, but does the existence of</p> <p>16 these Legacy collections to you suggest that there</p> <p>17 were legal holds in place?</p> <p>18 MR. COX: Object to the form.</p> <p>19 THE WITNESS: It does not necessarily</p> <p>20 follow that. And I -- as a hypothetical and maybe</p> <p>21 they collected for the purposes of accomplishing a</p> <p>22 hold. I know from -- in some cases that happens.</p> <p>23 I don't know if that's an indication or not of</p> <p>24 whether holds were issued.</p> <p>25 BY MR. SWANSON:</p>

<p style="text-align: right;">Page 541</p> <p>1 Q. Looking at the Coker, the one that was 2 collect -- the Legacy 2, it says it was a 3 historical collection of materials primarily 4 located in connection with the 1998 Texas action, 5 Coker v. Bill Thames Pharmacy, Inc. et al. 6 Do you see that? 7 A. Yes. 8 Q. And that was a case where a woman had 9 alleged that she developed malignant mesothelioma 10 from airborne exposure to talcum powder, and that 11 would be referring to either Johnson & Johnson 12 Baby Powder or Shower to Shower, right? 13 A. I'd have to double-check, but apparently, 14 yes. 15 Q. Okay. Speaking as to that collection that 16 was gathered as a result of this Coker case that 17 was filed in 1998, do you know what sources of -- 18 do you know -- generally, can you talk about how 19 the collection was created? 20 A. You know, I received a brief overview from 21 counsel and then I was also referred to the letter 22 that is marked as Exhibit 10 to familiarize myself 23 with those materials. 24 Q. Okay. Without me reading this letter in 25 detail right now, based on your understanding</p>	<p style="text-align: right;">Page 543</p> <p>1 other people. But beyond that, I don't have 2 specific information, nor did I do a discrete 3 investigation of this historical collection that 4 was brought forward. 5 Q. And do you know specifically -- or what 6 information do you have about the -- what was 7 being sought and what indexes -- indices, 8 electronic or paper, were consulted for that? 9 A. I don't have specific information beyond 10 what -- what's in the letter. 11 Q. And do you know who actually did the 12 search? 13 A. My understanding is that it was done under 14 attorney supervision. Beyond that, I can't speak 15 to who physically performed the search. 16 Q. Do you know if the search was done only 17 through paper files or were there electronic 18 searches done? 19 A. I'm reviewing the letter to see if there's 20 any indications. 21 Yeah. It -- it's not clear from the 22 letter what sources were consulted. There are -- 23 there are certainly references to paper documents. 24 I -- I can't ascertain the scope of the search 25 from the letter.</p>
<p style="text-align: right;">Page 542</p> <p>1 after having read it, do you know what sources 2 were consulted to locate relevant documents that 3 were collected and became Legacy 2? 4 A. Well, I did not personally verify this, 5 but based on my read of the document, on page 2 6 there's a question about the document collection 7 that occurred, and the text in the case that "the 8 collection efforts involved identifying, 9 collecting, and copying the reasonably available 10 documents related to talc from employees 11 identified in the memo," that collection which was 12 referred to as "the '98 collection" contains a 13 list of identified individuals below that. 14 Q. Okay. And you're looking at this list: 15 John Hopkins, Bill Ashton, Regina Gallagher, 16 Connie Seamen, James Molnar, Bob Russell, George 17 Lee, and Bruce Semple? 18 A. Yes. 19 Q. Are you aware of anybody else who was 20 consulted or -- for documents from whom documents 21 were sought with respect to this -- the Coker case 22 and the documents that became Legacy 2 collection? 23 A. Well, as I mentioned, I know basically my 24 understanding comes from a read of the documents, 25 and it does note that some documents came from</p>	<p style="text-align: right;">Page 544</p> <p>1 Q. And is your information about that 2 collection limited to that letter? 3 A. There was a brief summary of it from -- 4 from counsel, and then there's the materials that 5 are in the Exhibit 4 table. 6 Q. Where it mentions the collection? 7 A. The noncustodial list, yes. 8 Q. When you say a summary from counsel, and 9 I'm not specifically -- are you talking about some 10 written summary as in, for example, what's written 11 here in Exhibit 4, or something additional? 12 A. No. I was generally told that there was a 13 case and I was being provided a letter about the 14 case to educate me. 15 Q. Do you know whoever did the search, and I 16 know -- whether, how narrowly or broadly their 17 instruction was as to -- well, do you know how 18 broadly or narrowly they interpreted what was 19 relevant to the inquiry? For example, if there 20 was a document with attachments and the 21 attachments, for example, maybe one of the 22 attachments doesn't match up some particular 23 search terms or group of search terms, whether or 24 not all of the attachments would be included? 25 A. I -- I don't have that information. I</p>

<p style="text-align: right;">Page 545</p> <p>1 mean, I understand from the memo certain searches 2 were conducted with certain custodians and other 3 sources where the documents were reasonably 4 calculated to be, that they were put in boxes at 5 some point. They were rearranged and reorganized. 6 But that that collection has been preserved 7 historically in a monolithic way and only -- only 8 what's in this letter is what I know about how the 9 collection was performed. 10 Q. And in looking at your noncustodial 11 sources here, Legacy, the Legacy 4 collection. 12 MR. SWANSON: Oh, let me stop for a 13 second. 14 Is it about time for a little break? 15 MR. COX: That sounds good. 16 MR. SWANSON: I think that's about the 17 right time. Okay. And we'll have lunch coming, 18 so. But we'll do some more testimony first. I 19 think it's -- isn't it 11:30? 20 MR. COX: It is. 21 MR. SWANSON: Yeah. That's fine. Okay. 22 Good. 23 THE VIDEOGRAPHER: This marks the end of 24 Media Number 2, Volume III in the deposition of 25 James Mittenthal.</p>	<p style="text-align: right;">Page 547</p> <p>1 holds from the context of consumer talc. I didn't 2 specify this case individually. 3 Q. We had spoken about the Gambino case and 4 the Westfall case. Were any Legacy document 5 collections created in connection with those 6 cases? 7 A. Well, I'm not aware of a precise 8 definition of a Legacy document collection. I 9 know that in the noncustodial sources there are 10 four designated groups of documents called Legacy 11 1 through 4 that have been denoted that for 12 various reasons. 13 I don't -- I also understand that -- that 14 the global put out -- the global talc production 15 and, in addition to that, the specific productions 16 for Leavitt and Fong were based on documents that 17 were available, both through the ongoing 18 collection process as well as the incorporation of 19 Legacy 1 through 4. 20 I'm not aware of any distinct sets that 21 have been created that are called "Legacy," 22 anything else. But I know that the company used 23 its best efforts to collect the information from 24 whatever relevant sources were available and 25 incorporated those Legacy cases as well.</p>
<p style="text-align: right;">Page 546</p> <p>1 Off the record at 11:29. 2 (Recess taken.) 3 THE VIDEOGRAPHER: We are on the record at 4 11:52 a.m. 5 This marks the start of Media Number 3, 6 Volume III in the deposition of James Mittenthal. 7 Counsel, you may continue. 8 BY MR. SWANSON: 9 Q. Okay. Let's see. Gather myself up here. 10 You have that letter in front of you. 11 That was Exhibit 10 we were talking about, the 12 Legacy 2 collection in the Coker case. 13 You remember that? 14 A. Yes. 15 Q. And that indicates on the first page that 16 the case was actually filed in 1997; correct? 17 A. Yes. 18 Q. Okay. And was a legal hold issued in that 19 case? 20 A. I don't have information about that. 21 Q. Now, you knew about this document and you 22 asked for legal holds in this case. 23 Did you ask if there was a legal hold for 24 this case? 25 A. I recall asking for all relevant legal</p>	<p style="text-align: right;">Page 548</p> <p>1 MR. SWANSON: Move to strike as 2 nonresponsive. 3 BY MR. SWANSON: 4 Q. Was there -- do you have any information 5 that documents were gathered in connection with 6 the Westfall litigation that are part of the 7 global talc production of documents? 8 A. You know, I have no specific tie-back from 9 a document to a case. I have an understanding 10 that the documents that have been produced in this 11 case go back and in some cases many, many years to 12 the '60s before that. I -- I can't tie a 13 particular document to a particular prior case. 14 Q. Well, I mean, that's not really the case, 15 is it, because you've got these descriptions of 16 the Legacy collections and they tell you what 17 cases those were in connection with; correct? 18 A. Well, I was -- I believe I was speaking of 19 Legacy 1 through 4 as a carve-out to the general 20 approach that the company took to comply with its 21 production obligations. 22 Q. But you can tell from those Legacy 23 collections in connection with what case they were 24 done; correct? 25 A. I believe -- well, I --</p>

<p>Page 549</p> <p>1 Q. It says right there, it says, "Coker" -- 2 for Legacy 2, "Coker v. Bill Thames Pharmacy." It 3 was primarily collected in connection with that. 4 A. Yes. I see that now. I just read through 5 them, yes. 6 Q. And the Legacy collections, these were 7 stored at attorneys' offices; correct? And we saw 8 that -- you saw that with Legacy 2; correct? 9 A. I'm not able to respond in every case 10 where they were stored. I know they were in 11 attorney custody. 12 Q. Okay. But -- and if you would just answer 13 the question, because you're talking about this 14 huge gathering of documents over many, many years. 15 The question is simply now, are -- do you 16 have any information that documents were gathered 17 in connection with the Gambino case by Johnson & 18 Johnson and became -- and are now part of the 19 global talc collection of documents? 20 A. Other than Legacy 1 through 4, I cannot 21 tie specific documents to historical -- historical 22 cases, but I can speak to the fact that the 23 document production goes back many, many years. 24 Q. Okay. I didn't ask about how far it goes 25 back. I'm -- I've looked at the document</p>	<p>Page 551</p> <p>1 litigation that are part of the global talc 2 production? 3 A. My reasoning is just based on the 4 understanding that the documents go back many, 5 many years. That's the basis I have to understand 6 that there may be documents from other cases that 7 are a part of the global talc production. 8 Q. And when you say "maybe," that means 9 you're speculating, true, as to those particular 10 cases? 11 A. Well, I think by definition it is 12 speculation. 13 Q. Okay. Thank you. 14 I want to go back to the testing results a 15 little bit. 16 You're aware that testing for asbestos was 17 done on a quarterly and annual basis; correct? 18 MR. COX: Object to the form. 19 THE WITNESS: I am aware that there are 20 many types of testing and that included, for 21 instance, quarterly testing. 22 BY MR. SWANSON: 23 Q. Did you make any attempt to -- did you 24 make any attempt to determine the number of tests 25 that were generated during the course of the</p>
<p>Page 550</p> <p>1 collection, I understand that. That's not 2 responsive to my question. 3 So please answer the questions -- and 4 you're putting a bunch of nonresponsive stuff in 5 here and I want to get through this. So. 6 And, again, as to the Westfall case, same 7 answer, you're not aware of any documents that are 8 now part of the global talc production that were 9 gathered initially during the period of the 10 Westfall case; true? 11 A. I just want to make sure I understand the 12 answer. I'm not aware of any documents that I can 13 associate specifically with that -- with that 14 case. 15 Q. And you don't know whether or not any of 16 the documents that are part of the global talc 17 production were gathered during that -- during 18 that pending litigation, are you? 19 A. I have not done that particular 20 investigation. 21 Q. So you're not aware of it; correct? 22 A. One way or the other. 23 Q. Well, do you have any reason to believe 24 that there are documents related that were 25 gathered during the period of the Westfall</p>	<p>Page 552</p> <p>1 period from 1965 when we first asked for testing 2 results to the present, testing for asbestos, that 3 is, in the talc? 4 A. I did not investigate the number of tests 5 performed and the -- and the particular date 6 range. 7 Q. And can you say that even 1 percent of the 8 testing results were produced in the Leavitt case? 9 MR. COX: Object to the form of the 10 question. 11 THE WITNESS: I'm not in a position, nor 12 did I conduct an investigation to ascertain 13 percentages of -- of test results produced. 14 BY MR. SWANSON: 15 Q. And you didn't -- so you didn't do an 16 audit; correct? 17 A. Well, as I mentioned, there's many types 18 of test results. Even if I had attempted to do an 19 audit, I might not have viewed testing categories 20 in the -- as anyone else would have viewed them. 21 It's -- there's -- a number of different types of 22 testing analysis, certificates. I -- I don't have 23 a specific parameter to even make that assessment. 24 Q. Well, for example, you know how many 25 quarters there are in a year; right?</p>

<p style="text-align: right;">Page 553</p> <p>1 A. I -- I think so.</p> <p>2 Q. Right. And you can multiply, so that if</p> <p>3 you -- if you could -- you could find out by</p> <p>4 asking Johnson & Johnson when it first started</p> <p>5 doing quarterly testing for certain types of</p> <p>6 quarterly tests; correct?</p> <p>7 A. Well --</p> <p>8 Q. For example, from the talc that came out</p> <p>9 of the mine, you could find that out; right?</p> <p>10 A. That presupposes that I would be able to</p> <p>11 ascertain how many tests were done each quarter,</p> <p>12 which -- and even that information I don't -- I</p> <p>13 would have to understand how -- what I do know is</p> <p>14 that there are tests that were performed</p> <p>15 quarterly.</p> <p>16 But how many tests, where the tests were</p> <p>17 performed, I have some information about that in</p> <p>18 my notes, but I can't specifically say where every</p> <p>19 quarterly test was done so that I could multiply</p> <p>20 it.</p> <p>21 Q. Right. But you didn't try to figure that</p> <p>22 out. You didn't see whether or not in theory that</p> <p>23 could be done because you didn't do an audit;</p> <p>24 correct?</p> <p>25 A. I didn't do an audit of the number of</p>	<p style="text-align: right;">Page 555</p> <p>1 perhaps as proper names, does it include any terms</p> <p>2 that are not in English?</p> <p>3 MR. COX: Object to the form.</p> <p>4 THE WITNESS: You know, I -- I can't</p> <p>5 interpret all of the terms. I can say that</p> <p>6 these -- that the terms are as you and I see them</p> <p>7 here are -- I don't -- many of them look like</p> <p>8 English words or names, but I can't necessarily</p> <p>9 interpret all the terms or verify if there's any</p> <p>10 that aren't in English.</p> <p>11 BY MR. SWANSON:</p> <p>12 Q. I want to go to your notes, the paginated</p> <p>13 notes that's Exhibit 26.</p> <p>14 A. I got to pull that out again.</p> <p>15 THE REPORTER: Here. That's it; right?</p> <p>16 THE WITNESS: Looks good.</p> <p>17 BY MR. SWANSON:</p> <p>18 Q. We had touched on this yesterday. But if</p> <p>19 you go to page 42, these are your contemporaneous</p> <p>20 notes from interviewing an Uday Sharan; is that</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And you were discussing with him documents</p> <p>24 related to Johnson & Johnson India and Johnson &</p> <p>25 Johnson Thailand; is that right?</p>
<p style="text-align: right;">Page 554</p> <p>1 tests done.</p> <p>2 Q. Right. But hypothetically, you could go</p> <p>3 about trying to do that, correct, if you wanted</p> <p>4 to? You are telling us that that would be</p> <p>5 difficult and you're not sure if it could be done,</p> <p>6 but you can certainly think about how you would go</p> <p>7 about doing that and attempt to do that; correct?</p> <p>8 MR. COX: Object to the form.</p> <p>9 THE WITNESS: I mean, if we're talking</p> <p>10 hypothetically, I could -- I could -- you know,</p> <p>11 one -- not I, but one could attempt to conduct</p> <p>12 such an activity. I don't know if that</p> <p>13 information could be easily -- readily or even</p> <p>14 possibly ascertained, but one could go -- could go</p> <p>15 about an exercise to do that.</p> <p>16 BY MR. SWANSON:</p> <p>17 Q. I'm looking at Exhibit 6, and if you could</p> <p>18 pull that out, that's Tab 6 for you there. The</p> <p>19 next one in a row.</p> <p>20 And looking through this -- and Exhibit 6,</p> <p>21 for the record, what is that again?</p> <p>22 A. Those are to date -- or as of September 7,</p> <p>23 2018, a list of search terms by which the ERMS</p> <p>24 system was -- was searched.</p> <p>25 Q. Does that list include -- other than</p>	<p style="text-align: right;">Page 556</p> <p>1 A. Yes.</p> <p>2 Q. And he told you that the Thailand has</p> <p>3 batch manufacturing records, raw materials,</p> <p>4 packaging materials, and that the standard</p> <p>5 document retention was -- it says five years.</p> <p>6 There's a question mark next to it.</p> <p>7 Does that mean it was five years or around</p> <p>8 five years, do you remember?</p> <p>9 A. He -- he estimated it was five years.</p> <p>10 Q. Okay. Now, the Johnson & Johnson Thailand</p> <p>11 was making baby powder for distribution in Europe,</p> <p>12 correct, according to your notes?</p> <p>13 A. According to my notes.</p> <p>14 Q. And would you agree that the legal</p> <p>15 standards with respect to lawsuits and document</p> <p>16 retention and those sort of things are tougher in</p> <p>17 Europe, for example, or the United States, than</p> <p>18 they are in -- overseas in many countries like the</p> <p>19 Philippines?</p> <p>20 MR. COX: Object to the form of the</p> <p>21 question. And beyond the scope of the notice.</p> <p>22 THE WITNESS: I mean, it would call for</p> <p>23 some speculation. I mean, I know in Europe and</p> <p>24 other parts of the world there's -- there's</p> <p>25 certain privacy standards that are beyond those in</p>

<p>Page 557</p> <p>1 the U.S. I don't think it's an easily answerable 2 question even as a hypothetical. 3 BY MR. SWANSON: 4 Q. Do you know if the standard, for example, 5 the retention on these types of documents at J -- 6 Johnson & Johnson Philippines, which as I 7 understand makes Johnson's Baby Powder for the 8 Philippines, Philippines consumption, are -- the 9 retention period is as long? 10 MR. COX: Object to the form. 11 THE WITNESS: Yeah, I don't have specific 12 information on that. 13 BY MR. SWANSON: 14 Q. Were -- just so that the record is clear, 15 in Fong and Leavitt on these overseas searches, in 16 Leavitt, are there contemporaneous records -- 17 well, I should say, are there -- were there any 18 records produced -- located with respect to 19 Johnson & Johnson Philippines and the baby powder 20 manufactured there contemporaneous with her 21 exposure -- or alleged exposure in the 1966 to 22 1968 period in the Philippines with respect to the 23 mining, milling, or manufacturing of the talc and 24 the baby powder? 25 MR. COX: Object to the form.</p>	<p>Page 559</p> <p>1 mines, let's throw in there milling and 2 manufacturing since you're doing the search and 3 then we can touch on anything you do find. 4 A. And I'm just applying my general 5 understanding of your questions to these 6 categories, that is not dispositive, but, for 7 instance by your question, I would assume you 8 don't care about, for the sake of this question, 9 trade organization payments. 10 Q. Correct. 11 A. Or Workers' Comp. 12 Q. I'm asking about the mining, milling -- 13 the mining of the talc, the milling of the talc, 14 and the manufacturing of the baby powder with 15 respect to the Johnson's Baby Powder that was 16 manufactured in the Philippines from 1966 to 1968. 17 A. I'm sorry, I was reading Pam Downs' 18 section as you were restating the question. 19 I just want to hear it one more time 20 specific to the country. 21 MR. SWANSON: Can you read that, my 22 clarification, back to him? 23 (Record read by the court reporter.) 24 THE WITNESS: You know -- and I'm not an 25 expert on all the places where talc was mined and</p>
<p>Page 558</p> <p>1 THE WITNESS: I need to understand just a 2 couple parts of your question better. 3 Were those -- were there contemporaneous 4 documents located that were stored in those 5 countries or that were relating to those countries 6 but stored, let's say, in the United States? 7 BY MR. SWANSON: 8 Q. Yeah. Let me break it down a little bit 9 more, and it would be -- it would be either. Are 10 there any documents regarding the mining of the 11 talc for use in Johnson's Baby Powder that was 12 manufactured in the Philippines contemporaneous 13 with her exposure, in other words, for that period 14 1966-1968? 15 A. You know, I'm going to look at the 16 specific searches in that area. In terms of 17 information stored in the U.S., there -- I can't 18 speak to that. I have not looked at the global 19 talc production or the specific Leavitt 20 production. 21 There may -- I'm going to also consult the 22 production summaries to see if there's anything 23 written down about that. So I'm just going to 24 look at those sources. 25 Q. And since I asked the question specific to</p>	<p>Page 560</p> <p>1 manufactured and I'm not here to respond to that 2 specifically. I'm just noting that in my Pamela 3 Downs notes, it indicates for the Philippines that 4 talc was not mined there but was manufactured 5 there for a while. 6 BY MR. SWANSON: 7 Q. Right. And we had touched on this before, 8 and I had informed you based on the discovery 9 responses of Johnson & Johnson that the talc came 10 from Korea. 11 A. Yes. 12 Q. So if you have the information about the 13 mining and milling of Korean talc contemporaneous 14 with Teresa Leavitt's exposure in the Philippines 15 from 1966 to '68 that would be also responsive. 16 MR. COX: So why don't you take a look at 17 what you need to look at and then answer his 18 question. 19 THE WITNESS: I'm sorry. Take a look at 20 what? 21 MR. COX: Why don't you take a look at 22 whatever you need to look at and then answer 23 Mr. Swanson's question. 24 MR. SWANSON: That's fine. Let me -- and 25 I can re-ask the question later.</p>

<p>Page 561</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. Let's just -- let me be clear about the</p> <p>3 totality of what I am asking and I'm going to ask</p> <p>4 as to the Philippines and Teresa Leavitt's</p> <p>5 exposure and I'm going to ask as to Hong Kong.</p> <p>6 So for the Philippines, it's going to be</p> <p>7 the bottling of the talc related to Johnson &</p> <p>8 Johnson Philippines, the manufacturing, and it</p> <p>9 will be the mining and the milling of the talc</p> <p>10 that was used for that. And these are</p> <p>11 contemporaneous with her exposure. So '66 to '68</p> <p>12 period, okay? So that talc would have come from</p> <p>13 Korea based on what Johnson & Johnson has told us.</p> <p>14 And then in the Fong case, it would be the</p> <p>15 Johnson & Johnson baby powder distributed in Hong</p> <p>16 Kong from 1971 to '83, contemporaneous with that</p> <p>17 period, and it would be the mining of the talc</p> <p>18 during that period, mining and milling of the talc</p> <p>19 during that same period. And that talc, from what</p> <p>20 we have been told, also came from Korea.</p> <p>21 So it's whether or not there are any</p> <p>22 contemporaneous documents that have been located</p> <p>23 and produced for that.</p> <p>24 A. So I want to -- I want to find the</p> <p>25 production requests.</p>	<p>Page 563</p> <p>1 or not documents related to the mining and milling</p> <p>2 of talc or the manufacturing of the baby powder</p> <p>3 contemporaneous with their exposure in Hong Kong</p> <p>4 and the Philippines -- and I'll separate them --</p> <p>5 were located and produced.</p> <p>6 Do you remember that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And have you had an opportunity to</p> <p>9 look at anything else?</p> <p>10 A. So I -- I did this for both Hong Kong and</p> <p>11 the Philippines: consulted my notes, specifically</p> <p>12 noncustodial sources, interview notes, including</p> <p>13 the interview notes with Pam Downs.</p> <p>14 I looked at the chart that I had assembled</p> <p>15 that represented the follow-up collection efforts</p> <p>16 for Leavitt and Fong.</p> <p>17 I then turned to the document production</p> <p>18 summaries and --</p> <p>19 Are we on Fong or Leavitt at this point?</p> <p>20 Q. Let's talk about Leavitt first and Johnson</p> <p>21 & Johnson Philippines, the manufacturing of that</p> <p>22 baby powder from '66 to '68 and the mining and</p> <p>23 milling from Korea that was used in that baby</p> <p>24 powder.</p> <p>25 A. Well, I can't answer the questions with</p>
<p>Page 562</p> <p>1 Q. Now, the production requests --</p> <p>2 Do you have the -- well, yeah. Go ahead</p> <p>3 and look at that.</p> <p>4 A. Actually...</p> <p>5 MR. SWANSON: Yeah. Why don't we do this,</p> <p>6 let's take our break and grab our lunch.</p> <p>7 Obviously, since I've committed to a stop</p> <p>8 time, I don't want to, you know, run out my clock</p> <p>9 by taking the time to do this.</p> <p>10 If you can sort of gather your thoughts</p> <p>11 during the break, that would be great.</p> <p>12 Okay. Let's go ahead and go off the</p> <p>13 record.</p> <p>14 THE VIDEOGRAPHER: Off the record at</p> <p>15 12:17.</p> <p>16 (Lunch break taken.)</p> <p>17 THE VIDEOGRAPHER: On the record at 1:02.</p> <p>18 You may continue, Counsel.</p> <p>19 BY MR. SWANSON:</p> <p>20 Q. Okay. Mr. Mittenenthal, we've had our lunch</p> <p>21 break. Are you okay to continue?</p> <p>22 A. Yes.</p> <p>23 Q. Good. Before the break, I was asking you</p> <p>24 very specific questions -- or I was attempting</p> <p>25 to -- about the Fong and Leavitt cases and whether</p>	<p>Page 564</p> <p>1 respect to the specific entities of Johnson &</p> <p>2 Johnson. What I attempted to do was to understand</p> <p>3 the extent to which those questions have been</p> <p>4 asked for document production and that document</p> <p>5 responses have been provided.</p> <p>6 To do so, with respect to Leavitt, I</p> <p>7 looked at this production summary which has been</p> <p>8 marked as Exhibit 14 and I looked first of all at</p> <p>9 the Set 3 which is -- has tabs that, in the</p> <p>10 document production responses that relate to just</p> <p>11 general questions about entities that supplied</p> <p>12 talc and mines that were sources of talc and the</p> <p>13 J&J Company's role in mining and processing of</p> <p>14 talc and the specified date range to see if there</p> <p>15 was anything specific to the contemporaneous time</p> <p>16 frames for Fong or Leavitt -- well, in this case,</p> <p>17 Leavitt -- or any indications of those overseas</p> <p>18 locations.</p> <p>19 I looked -- as I mentioned, I looked in</p> <p>20 the RFP Set 3 for those and I looked specifically</p> <p>21 at responses on, I believe, starting on page 8</p> <p>22 which is Request -- I'm sorry -- page 7, Request</p> <p>23 22. And I did not see anything specific to the</p> <p>24 particulars of your question in terms of</p> <p>25 locations.</p>

<p>Page 565</p> <p>1 I went to then RFP Set 7 which was 2 specific to the Philippines and the aforementioned 3 date ranges and I consulted to the responses to 4 RFP Set 7 which begin in the binder that I have as 5 tab N as in Nancy, and in the -- starting with 6 page 1, Request 99, I reviewed those productions 7 and production summaries, and, as noted, there 8 were certain documents identified in response to 9 that -- to those searches, including some that 10 were designated confidential. In reviewing those, 11 started with 99, continuing through page 2, I note 12 that in response to RFP 103, "All documents 13 regarding or reflecting the locations where 14 Johnson's Baby Powder was manufactured which was 15 supplied to the Philippines from 1965 through 16 April 1968," there is an indication that there 17 were documents produced and that the Exhibit 1, 18 which is, I believe, a spreadsheet of -- 19 containing the relevant Bates ranges under Tab 2, 20 denotes the documents that were responsive to 21 that.</p> <p>22 I also continued going through Request 104 23 and noted the request for locations where 24 Johnson's Baby Powder was manufactured which was 25 available for purchase in the Philippines from</p>	<p>Page 567</p> <p>1 maybe I just heard that, but you were actually 2 looking at the Set 2 of request for production to 3 Johnson & Johnson Consumer, Inc.; correct? That's 4 the numbers you were referencing. They're fairly 5 equivalent, but the numbering is different, so I 6 just wanted to be clear. That's what you were 7 just referencing when you were going through Set 8 Number 7?</p> <p>9 MR. COX: Look at the footer. 10 THE WITNESS: Oh. Yeah. I'm sorry, 11 Johnson & Johnson Consumer, yes. 12 BY MR. SWANSON: 13 Q. And I didn't have that in front of me. So 14 let me -- and you haven't reviewed the specific 15 documents that were stated as being responsive to 16 those requests; correct? 17 A. Correct. I noted on the first day that I 18 had run various documents from the production to 19 get an understanding of several hundred documents. 20 I didn't review any of these production sets 21 specifically for that goal. 22 Q. So, yeah, you kind of -- because I didn't 23 have this in front of me, I wasn't looking at the 24 same thing you were talking about. 25 So we're going to have to go through it</p>
<p>Page 566</p> <p>1 1966 through April 1968, and also noted documents 2 that were provided in response in Exhibit 1, 3 Tab 2. And then continued on through 104, 105, 4 106, 107. And then 107, which was documents 5 regarding or reflecting what entities supplied 6 talc that was used in Johnson's Baby Powder 7 supplied to the Philippines from 1965 through 8 April 1968. I noted that in Exhibit 1, Tab 3 9 there were other documents produced in response to 10 that request, as well as Request For 11 Production 108, which was similar, although 12 instead of supplied to the Philippines, it was 13 available for purchase in the Philippines from 14 1966 through 19' -- April 1968.</p> <p>15 The documents were produced in that same 16 exhibit, Exhibit 1, Tab 3. So that was -- those 17 were the request for production categories that I 18 consulted that yielded documents that had been 19 produced that I believe are in the context of your 20 question.</p> <p>21 Q. All right. So you provided a lot of 22 information there. We're going to have to break 23 that down substantially.</p> <p>24 You threw me off there. You were actually 25 talking about -- you said Johnson & Johnson, and</p>	<p>Page 568</p> <p>1 again even though you gave me that long answer. 2 Let's start with Request 103 on Set Number 3 7. That's reflecting the locations, okay? There 4 were a list there of documents. Let's see. 5 And, I'm sorry, what was the other set 6 that you were referring to, Set Number 5? 7 A. I believe it was Set 3, and that was just 8 from the standpoint of making sure that in the -- 9 sort of the general request for production that 10 didn't specify a country, I wanted to confirm that 11 there were no mentions of those countries in any 12 of the responses. So I consulted RFP Set 3, the 13 tabs that included 6, 7, 8. 14 Q. Okay. 15 A. Just to make sure there were no mentions. 16 Q. Okay. So let me -- and I'm not going to 17 make too firm of a representation about exactly 18 what has been produced. But let me start with 19 just asking you, or confirming. You didn't review 20 the specific documents that were -- that were 21 identified as being produced to those requests we 22 talked about. So, going back to my original 23 question, if you can answer this because -- well, 24 let me -- let me back up another step. 25 When I looked at your notes on the</p>

<p>Page 569</p> <p>1 Philippines in the Hong Kong -- and Hong Kong and 2 looking at what I had looked at from the 3 production in your notes, it looked to me like 4 what had been -- what -- that, for example, Hong 5 Kong they weren't related -- they weren't able to 6 locate any responsive documents. 7 And, as to the Philippines -- and this is 8 looking at page, I think, 64 of your notes -- 9 saying that nothing had been found in the date 10 range. 11 So that's where I started with this, is 12 that you had nothing being found in that date 13 range, so -- and you haven't reviewed specifically 14 the documents that were produced in response to 15 the request that you pointed out. 16 So are you aware of any manufacturing 17 documents with respect to the Philippines 18 Johnson's Baby Powder that were produced for that 19 period from 1966 to 1968? 20 A. Well, I don't -- I'm interpreting these 21 broadly. So I don't know what "supply" means. 22 For instance... 23 Q. And "supply" does include manufacturing. 24 A. Okay. So, for instance, in 101, the 25 documents regarding or reflecting location where</p>	<p>Page 571</p> <p>1 because the question is not phrased precisely that 2 way and it's phrased broadly enough that it can 3 include other documents. So. 4 But you haven't reviewed the specific 5 documents that were produced; right? 6 A. I've sampled them. I have not reviewed 7 them. 8 Q. Sampled them. Right. 9 A. Yes. 10 Q. And your initial -- your initial notes 11 speaking to Pam Downs it indicated that there 12 weren't any documents related to the 13 manufacturing, correct? 14 MR. COX: Object to the form. 15 BY MR. SWANSON: 16 Q. During the -- during the relevant time 17 period. 18 A. My notes from Ms. Downs covered the onsite 19 searches of archive materials in the Philippines, 20 so that -- that only covered that category of 21 document searches. 22 Q. As to -- and what about as to the mining 23 and milling by the Korean talc supplier. Do you 24 have any -- has Johnson & Johnson produced 25 documents regarding the mining and milling of the</p>
<p>Page 570</p> <p>1 Johnson's Baby Powder was manufactured which was 2 supplied to the U.S. Navy in the Philippines in 3 the date range. 4 So I conclude that that is a part of your 5 question insofar as it relates to manufacturing. 6 Q. Yes. "Supply" includes manufacturing. 7 A. Okay. So, for instance, in page 2 of 8 Tab -- I guess this is Set -- Set -- Set 7 -- 9 Q. Uh-huh. 10 A. -- of -- in the -- in the notebook under 11 Tab N, Number 103 on page 2, "documents regarding 12 or reflecting location where Johnson's Baby Powder 13 was manufactured which was supplied to the 14 Philippines." 15 So that is "manufactured." There were 16 documents provided that are reflected in 17 Exhibit 1, Tab 2. 18 Q. Right. And that's regarding the location. 19 Okay. I guess -- and partly I may need to get to 20 the bottom of this by specifically looking through 21 each and every document that was produced. What I 22 am telling you is that I am not aware of documents 23 specific to the manufacturing being produced for 24 the Philippines for that '66 to '68 time frame. 25 And I don't think the answer resolves that issue</p>	<p>Page 572</p> <p>1 talc contemporaneous with Ms. Leavitt's exposure 2 from '66 to '68? 3 A. Well, you know, I'm not the best person to 4 interpret what's covered in some of these 5 requests. It is possible that 103 would cover 6 that. 7 Q. Okay. Let's -- I get that, and -- but 8 that's a specific question. And, you know, 9 whether or not there was a request that covered 10 it, because simply you looking at what tabs were 11 referenced in an Excel spreadsheet and the Bates 12 numbers isn't going to tell you if something was 13 produced specifically responsive to my question. 14 So -- and if you don't know the answer, 15 that's fine, but I don't want a record that is 16 unclear, so -- and if you don't know and we just 17 need to look at it again, that's okay. But I 18 don't have -- yeah. I think if you can just focus 19 on the question -- and if you don't have the 20 answer based on the information that you have, 21 that's fine. 22 A. I've gathered a lot of information in 23 anticipation of these topics, including all the 24 productions, my notes. In response to the 25 question at hand, I have tracked down what I think</p>

<p>Page 573</p> <p>1 is the best place to look to definitively answer 2 the question. I have certainly not reviewed the 3 documents to determine which ones are specifically 4 responsive, but this is -- this is my best answer 5 to where one would determine those documents that 6 are in the context of your requests. 7 Q. And as to -- we're not going to get -- 8 obviously get to the bottom of this right now in 9 terms of the -- whether or not those documents 10 are, but if those documents listed aren't 11 regarding the manufacture during that time period 12 of from '66 to '68 of Johnson's Baby Powder at the 13 Philippines facility, then they weren't produced; 14 correct? 15 MR. COX: Object to the form. 16 THE WITNESS: Well, once again, what you 17 are asking for sounded a lot like this category. 18 Now, as you said, the category may not be 19 precisely those documents. There may be overlap. 20 But it's the closest approximation of what you're 21 looking for. 22 BY MR. SWANSON: 23 Q. I understand that. And that's the best 24 you can do based on that. This is just the 25 question, though, if those documents -- and I've</p>	<p>Page 575</p> <p>1 here, but there are reasons why they -- they could 2 have been misfiled in a different part of the 3 warehouse. I mean, I'm just saying there are -- 4 you know, there are errors in the process that 5 occur from time to time in filing information. 6 BY MR. SWANSON: 7 Q. Same question as to Hong Kong. Did you 8 look at Hong Kong to see if you had -- if Johnson 9 & Johnson produced manufacturing documents 10 contemporaneous with Ms. Fong's exposure? 11 A. So as I mentioned, I consulted my notes, 12 including my typewritten notes, my follow-on with 13 Pamela Downs, the noncustodial document listing. 14 Then I further went to the production summaries 15 for Fong, RFP Set 1. It speaks to mining 16 entities, mines that produced talc for JPP in Hong 17 Kong '70 through '84. Other -- the next four or 18 five entries -- and I went to the corresponding 19 sections, which I believe are in the Fong binder 20 under discovery responses, Tab 3, Subtab C, and 21 looked through -- well, I looked through -- just 22 starting from the beginning, looked through 1, 2, 23 3, 4. I'm up through -- you know, it was -- it's 24 more difficult to connect your question to the 25 specific categories in Fong. I -- for instance, I</p>
<p>Page 574</p> <p>1 reviewed them and I haven't seen what I'm looking 2 for here and that's why I'm asking. And, you 3 know, there are a lot of documents, so it's 4 possible I missed it. 5 But if those -- if those documents 6 regarding the manufacture of the baby powder from 7 '66 to '68 aren't listed among those documents in 8 those tabs that are cited, then they were not 9 produced; correct? 10 A. That would -- that would make sense. 11 Q. Okay. And if they hadn't been produced, 12 assuming they hadn't been produced -- and I 13 understand this is a hypothetical -- then they 14 were destroyed at some point; correct? 15 MR. COX: Object to the form. 16 THE WITNESS: I mean, that -- that is one 17 explanation. That is also a hypothetical as to 18 what happened, why they weren't produced. They -- 19 they -- there's other explanations. 20 BY MR. SWANSON: 21 Q. The other explanation would be what, that 22 a -- not an adequate search was done? 23 MR. COX: Object to the form. 24 THE WITNESS: They could have been 25 mislabeled. I'm, you know, in hypothetical land</p>	<p>Page 576</p> <p>1 looked at Response 11, "testing of talc marketed 2 in Hong Kong from '70 through '84." There were 3 documents produced for that. I understand that to 4 be part of the manufacturing process. 5 I looked at response -- Request For 6 Production 12. 7 I haven't found other document categories 8 that were produced that are directly reflective of 9 your question in Fong, looking at -- looking 10 through the production set. 11 Q. The same thing in Fong, you haven't looked 12 at the actual documents that were produced under 13 those categories related to Hong Kong 14 manufacturing; correct? I mean, you see where 15 some Bates numbers have been identified; correct? 16 A. Yes. And I sampled some documents. But I 17 haven't looked at them for the eye to verifying 18 what was there. 19 Q. Were -- just in terms of audio that was 20 produced in the Leavitt and Fong matters, were the 21 only audio records that were produced related to 22 advertising? 23 A. You know, I was just checking the 24 noncustodial sources to see if there's any 25 additional information about that. I -- I don't</p>

<p>Page 577</p> <p>1 know for sure. An audio file could just be a 2 computer file type that's present in a custodial 3 production in a share directory. I can't speak to 4 the extent to which there may be files that have 5 audio in them. 6 Q. If you go to Exhibit Number 6 which are 7 the archive search terms. You have -- it's Tab 6 8 in your binder. 9 A. Okay. Thank you. 10 Q. And these are the archive search terms 11 that are used in the ERMS system to locate 12 documents that may have relevant documents to the 13 talc litigation, correct, that are Iron Mountain's 14 archive documents and I believe some onsite 15 collections, too; is that correct? 16 A. There are -- onsite there is a movable 17 file system in the records-keeping facilities, and 18 the ERMS would have covered that area as well as 19 offsite storage. 20 Q. And this was the most recent list of 21 archive search terms; true? 22 A. Yes. 23 Q. If you go to -- I don't these are 24 numbered, but if you go to the third page of this, 25 they're alphabetical, though, right, the search</p>	<p>Page 579</p> <p>1 MR. COX: Object to the form. Beyond the 2 scope of the notice. 3 THE WITNESS: You know, I didn't see that 4 as my area to investigate under the scope of the 5 notice. I will say that the composition of the 6 searches is -- some of the attorneys have made 7 their work product, and I have a general 8 understanding that it's designed -- the totality 9 of the search terms are designed to cast a very 10 wide possible net. The search terms have been 11 refined over time. They have been provided to the 12 plaintiffs, as I understand. I -- I can't opine 13 on whether a particular term would have been 14 appropriate in the context of all the terms 15 presented. 16 MR. SWANSON: Move to strike nonresponsive 17 portions. 18 BY MR. SWANSON: 19 Q. If you -- if you see under Exhibit 6, 20 there's a search term "mesothelioma"? 21 A. Yes. 22 Q. Okay. Do you know if this system is set 23 up to do stem searches? 24 A. You know, I did not conduct a -- and I 25 think we got into this on a previous day as well.</p>
<p>Page 578</p> <p>1 terms, the way they're set out here? 2 A. Well, I don't know if the search 3 descriptions or the terms are alphabetical. I 4 believe it's the search titles, not the terms. 5 Q. Do you see the search term "fiber" 6 anywhere in these archive search terms? 7 A. I don't see the term "fiber," but it may 8 be there. As a quick go-through, I don't see it. 9 Q. That is a term which I don't see it in 10 there and I've looked at it. That's a term that 11 should be in there, shouldn't it, for talc 12 litigation? 13 MR. COX: Object. Object to the form of 14 the question. Beyond the scope of the notice. 15 BY MR. SWANSON: 16 Q. I mean, you told us that people would 17 enter information about the boxes and the amount 18 of information and descriptive information they 19 would vary. 20 Isn't "fiber" a term that you'd want to 21 look for if you were looking for documents 22 relevant to asbestos talc litigation where there's 23 an allegation that the tremolite that's being 24 found in Johnson's Baby Powder is fibrous 25 tremolite?</p>	<p>Page 580</p> <p>1 I don't -- I didn't understand -- seek to 2 understand the search engine behind ERMS and how 3 it does stem searches or fuzzy searches or if it's 4 Google-like in the way it returns information. 5 BY MR. SWANSON: 6 Q. And it makes sense that "mesothelioma" 7 could be misspelled by people; right? 8 MR. COX: Object to the form. 9 BY MR. SWANSON: 10 Q. It's a complicated enough word that one 11 would expect that that could be misspelled; true? 12 MR. COX: Object to the form. 13 THE WITNESS: Yes. In general I would 14 agree as a -- as a lay opinion. 15 BY MR. SWANSON: 16 Q. And you would want, then, search terms 17 that would pick up possible misspellings, and one 18 way to do that is to have what's sometimes called 19 a "stem search"; correct? 20 A. For the sake of certain search engines, I 21 would agree with you. 22 Q. And if you continue on here, if you look 23 at -- if you look in the Ts, do you see the term 24 "talc" in there? 25 A. Yes.</p>

<p>Page 581</p> <p>1 Q. There is no term "talcosis" in there, is 2 there? 3 A. I wouldn't guarantee it, but I don't see 4 it. 5 Q. I mean, most of these things from your 6 view of this are alphabetical, right, even the 7 search terms and the search description that 8 generally are falling in the same alphabetical 9 range; correct? 10 A. They appear to be alphabetized. 11 Q. Okay. If you go to the Cs, you've heard 12 the term "cleavage fragment" when it comes to talc 13 and testing talc for the presence of asbestos? 14 A. I -- I'm not sure if I know that 15 expression or not. 16 Q. You haven't heard it? 17 A. I may have. I don't recall. 18 Q. It's something that the -- it's an element 19 found in testing results -- or claimed in testing 20 results that, for example, the tremolite that's 21 being found or the anthophyllite is a cleavage 22 fragment and not an asbestos fiber. 23 Have you heard about that controversy at 24 all? 25 A. I'm not current on the technical details</p>	<p>Page 583</p> <p>1 may be relevant, but it may not be a criteria to 2 retrieve a box. 3 BY MR. SWANSON: 4 Q. And -- now, you say it may not be a 5 criteria to return a box. 6 The -- the information that you gave me 7 about what were required terms on those boxes, if 8 I remember right, was a date range, the retention 9 cutoff period, and the department; correct? Those 10 were required terms. 11 A. Well, the retention series. 12 Q. Okay. Retention series. 13 A. Which would then be driven off the date 14 range, but yes. 15 Q. Okay. That's -- and then they were 16 supposed to put in a textual or a narrative 17 description of the contents of the box; correct? 18 A. Yes. 19 Q. And there were no hard-and-fast rules that 20 you knew about that were consistent throughout the 21 company in terms of exactly what information was 22 in there; right? 23 A. As I recall, the department, each 24 individual department, was responsible for how 25 that information was entered based on the</p>
<p>Page 582</p> <p>1 of that. 2 Q. Assuming that I didn't misrepresent that 3 to you, wouldn't it make sense that you would want 4 the term "cleavage" in these archive search terms? 5 A. You know, once again, my understanding is 6 that these search terms were designed to retrieve 7 boxes that had been denoted a certain way to be 8 sent to storage. 9 I don't -- I -- I'm not opining on whether 10 a term like that would be appropriate to locate a 11 box in this particular context. 12 Q. If you go to the Is -- turn to the Is 13 here. 14 Are you there? 15 A. Yeah. 16 Q. "I-N"? 17 A. Yes. 18 Q. You see the term "inhalation" anywhere? 19 A. I -- I don't see the term "inhalation" on 20 this page. 21 Q. Certainly you can agree with me that 22 "inhalation" is a relevant term when -- a relevant 23 term to the talc litigation; correct? 24 MR. COX: Object to the form. 25 THE WITNESS: As I mentioned before, it</p>	<p>Page 584</p> <p>1 requirements laid out by the SOP of the records 2 department. 3 Q. So how did Johnson -- based on that and 4 based on the issues that are -- would be relevant 5 here, how did Johnson & Johnson go about 6 determining the terms such as "fiber" and 7 "inhalation" and "talcosis" and "cleavage" are not 8 relevant? Because you don't know specifically 9 what that individual is going to put in their 10 textual description, do you? 11 MR. COX: Object to the form. 12 BY MR. SWANSON: 13 Q. And it's variable. 14 A. As I mentioned before, the search terms 15 were designed to return a large overly inclusive 16 set of boxes. The search terms have been refined 17 over time and they've been -- the decision as to 18 what goes into a search term is -- is a legal -- 19 ultimately a legal decision. 20 Q. And they've been refined over time to make 21 changes; correct? 22 A. Well, that -- I think that's the 23 definition of "refined." 24 Q. And giving Johnson & Johnson's lawyers the 25 benefit of the doubt in terms of creating that,</p>

<p>Page 585</p> <p>1 you would hope that the changes that were made 2 over time were to improve this and make it catch 3 more relevant documents; true? 4 MR. COX: Object to the form. 5 THE WITNESS: Well, "improve" is a -- is 6 one rationale that there may have been other 7 specific searches related to Leavitt and Fong that 8 would have been added so it was -- the -- the 9 search terms themselves reflect all of the cases 10 and matters and needs that have been, up until 11 that present time, encapsulated in the -- in the 12 list. 13 BY MR. SWANSON: 14 Q. You're not saying this is a perfect list, 15 are you? 16 A. I don't believe I said that. 17 Q. Okay. And you're not testifying either 18 that -- you don't know one way or the other 19 whether or not using the terms "talcosis," 20 "fiber," "cleavage," "inhalation" would produce -- 21 would catch more boxes of documents that had 22 relevant information and documents in them; true? 23 A. That's a hypothetical. I'm not able to 24 speak to that hypothetical, no -- or yes. I 25 mean --</p>	<p>Page 587</p> <p>1 topics that were identified in plaintiff's 2 deposition notice? 3 A. There were a number of different topics in 4 the notice. They covered a number of different 5 functional areas and departments, and my prior 6 experience with the company and as a consultant, 7 my knowledge of the information enabled me to go 8 and speak to people in the various aspects of the 9 company to gather the documentation to cohesively 10 bring all the information together to be able to 11 provide the best answers to those questions. 12 Q. Did you investigate all of the areas in 13 which you were asked to provide testimony over the 14 three days? 15 A. Yes, I did. 16 Q. Can you please describe how you did that 17 investigation? 18 A. Well, I conducted at least -- I conducted 19 four site visits. During that period, I spoke to 20 various records managers and people with 21 responsibility for document issues. Over time, I 22 expanded the list of people that I interviewed to 23 encompass nearly 40 people and nearly 70 24 single-spaced typewritten pages of notes. 25 I requested a number of documents,</p>
<p>Page 586</p> <p>1 Q. Right. Because you -- you haven't audited 2 that, have you? 3 A. "Audited" by meaning that I haven't -- 4 Q. By adding -- nobody did an experiment, as 5 far as you know. Johnson & Johnson hasn't audited 6 this to add a search term like "fiber" and see if 7 it would pick up anything else, has it? 8 A. I -- I don't know. That was beyond the 9 scope of my inquiry for this matter. 10 MR. SWANSON: Okay. I'll keep to my 11 promise. 12 MR. COX: Can we go off the record for a 13 moment? 14 MR. SWANSON: Yes. 15 THE VIDEOGRAPHER: Off the record at 1:45. 16 (Off the record.) 17 THE VIDEOGRAPHER: On the record at 1:48. 18 You may proceed, Counsel. 19 CROSS-EXAMINATION BY MR. COX: 20 Q. Mr. Mittenthal, I'm just going to ask you 21 a few questions on behalf of the J&J defendants, 22 okay? 23 A. Yes. 24 Q. Do you have an understanding of why you 25 were asked to provide testimony in response to the</p>	<p>Page 588</p> <p>1 including retention schedules, policies and 2 procedures, other supporting materials. I asked 3 for production summaries and built with that 4 information timelines, applications listings, 5 people listings of -- lists of legal holds which I 6 requested, and better in order to understand the 7 document population itself. 8 I loaded a litigation review tool on my 9 computer and went through various aspects of the 10 production, looked at the exhibit spreadsheets and 11 the various tabs, and put Bates ranges in to look 12 at the documents specifically. 13 I sampled several hundred documents. 14 I conducted follow-up interviews. 15 I -- probably in total I put together 16 about ten different reference aids in order to be 17 able to respond to the questions. 18 Q. You mentioned interviewing a number of 19 people, nearly 40 people. 20 What disciplines or functional areas did 21 those individuals cover? 22 A. They included people in the records 23 function, in the quality function. And that's 24 both supplier quality as well as internal quality 25 control; records officers; IT people; procurement</p>

<p>1 people; people involved with the supply chain; 2 people in the corporate organization, including 3 records officers; third parties, including several 4 vendors who were responsible for assisting in 5 retrieving and staging documents. That brought 6 the total to about close to 40.</p> <p>7 Q. And you mentioned that the list of 8 interviewees expanded over time.</p> <p>9 Who determined which individuals you 10 interviewed in connection with your fact-finding?</p> <p>11 A. I did.</p> <p>12 Q. How did you go about doing that?</p> <p>13 A. Well, I asked to identify the records 14 officer first. And then that led me to a records 15 person who had more experience actually running 16 the searches in the system, and then that brought 17 me to the corporate records people.</p> <p>18 I had previously experience with the 19 corporate reports people, so I knew some of the 20 people to ask and also some of the corporate IT 21 people to ask.</p> <p>22 And then, through the records officers at 23 the consumer level, I was able to get names of 24 other people involved with R&D and supply chain 25 and supplier quality and, you know, sort of built</p>	<p>Page 589</p> <p>1 at the corporate level as well as at the consumer 2 level or the operating company level. And I knew 3 which procedures were operational at the corporate 4 level, the worldwide policies and supporting 5 schedules. Through the results of my interviews 6 at the consumer level, I learned of the existence 7 of the consumer level schedules and their 8 histories and requested those.</p> <p>9 I was also -- also went to the legal team 10 and requested the document productions, their 11 request for interrogatories, the holds, the 12 pleadings of other -- other materials in the case 13 file to best educate myself, both about the nature 14 of the Fong and Leavitt cases as well as the 15 efforts to produce information to date.</p> <p>16 Q. In terms of all of the efforts you've 17 described involved in your preparation, over how 18 long a period of time did that occur?</p> <p>19 A. I started in the -- in the spring of 2018 20 approximately March -- in the March time frame. 21 Some of the people I knew had come from earlier 22 efforts in other matters. But my fact-finding in 23 this case -- and I went to all those people, 24 starting in March and interviewed them all going 25 forward.</p> <p>Page 591</p>
<p>1 upon those lists additional names.</p> <p>2 And then, with respect to the actual 3 collection activities, I knew -- I knew from 4 counsel who the vendors were and sought to 5 interview the vendors.</p> <p>6 And then, in terms of some of the 7 follow-up, I found it necessary to speak to people 8 in the corporate secretary's office to learn 9 information about the additional searches 10 conducted for the cases.</p> <p>11 Q. Did you identify any individuals at any 12 time during your investigation that you believed 13 were important to your fact-finding but who you 14 did not speak with?</p> <p>15 A. I did not.</p> <p>16 Q. Were there any questions during your 17 interviews that you wanted to ask people that you 18 were not permitted to ask?</p> <p>19 A. There were not.</p> <p>20 Q. How did you go about identifying the 21 documents that you said you reviewed?</p> <p>22 A. Well, with respect to the records 23 officers, I knew that there were procedures -- and 24 this goes back to my past experience with the 25 company that there were procedures and schedules</p>	<p>Page 592</p> <p>1 Q. And in total, how many hours were involved 2 in your preparation to give testimony regarding 3 the topics for which you were designated in the 4 Leavitt and Fong cases?</p> <p>5 A. At least 200.</p> <p>6 MR. COX: I don't have any further 7 questions.</p> <p>8 Thank you, Mr. Mittenenthal.</p> <p>9 THE VIDEOGRAPHER: This concludes the 10 deposition --</p> <p>11 MR. SWANSON: Uh, uh, uh, uh --</p> <p>12 THE VIDEOGRAPHER: Oh, I'm sorry. I 13 was -- I was waiting -- I'm so sorry. I was 14 waiting for a response. I saw nothing. I strike 15 that.</p> <p>16 MR. SWANSON: I need to take my seat 17 again.</p> <p>18 THE VIDEOGRAPHER: Yeah. So sorry.</p> <p>19 MR. SWANSON: We're still on the record, 20 aren't we?</p> <p>21 Oh, funny.</p> <p>22 REDIRECT EXAMINATION BY MR. SWANSON:</p> <p>23 Q. I bet you're happy this is about done, 24 huh?</p> <p>25 A. Well --</p>

<p style="text-align: right;">Page 593</p> <p>1 Q. I think we all are.</p> <p>2 A. I will be happy when it is done.</p> <p>3 Q. I just want to clarify some things from</p> <p>4 the testimony you just gave, and I will be brief.</p> <p>5 When you -- you testified in June in the</p> <p>6 Hayes case; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in June, you said you were aware of</p> <p>9 the Leavitt case but you hadn't been asked to do</p> <p>10 any specific work with respect to that case.</p> <p>11 Do you remember that testimony?</p> <p>12 A. Yes.</p> <p>13 Q. And you also said you didn't even know</p> <p>14 about the Fong case.</p> <p>15 You remember that testimony in the Hayes</p> <p>16 case?</p> <p>17 A. I didn't recall it, yes.</p> <p>18 Q. So you hadn't done any work in these cases</p> <p>19 up until June; correct?</p> <p>20 A. I would disagree that --</p> <p>21 Q. Specific to these cases.</p> <p>22 A. My work encompassed talc cases and they --</p> <p>23 much of my preparation was in connection with</p> <p>24 Hayes which I supplemented with specific Fong and</p> <p>25 Leavitt investigation.</p>	<p style="text-align: right;">Page 595</p> <p>1 A. Those were interviews that were</p> <p>2 follow-ups.</p> <p>3 Well, I hadn't spoken to Ms. Giacino</p> <p>4 before that.</p> <p>5 Q. And none of those original interviews were</p> <p>6 done specifically -- of those 40 people were done</p> <p>7 specifically with the Leavitt and Fong cases in</p> <p>8 mind; true?</p> <p>9 A. They were done with -- with the talc</p> <p>10 litigation in mind.</p> <p>11 Q. Okay. That wasn't my question. They were</p> <p>12 not done specifically with Leavitt and Fong in</p> <p>13 mind, were they?</p> <p>14 A. Correct.</p> <p>15 Q. Everything that you've learned from these</p> <p>16 individuals you've spoken to, other than the</p> <p>17 attorneys for Johnson & Johnson, you've reflected</p> <p>18 in your contemporaneous notes; correct?</p> <p>19 MR. COX: Object to the form.</p> <p>20 BY MR. SWANSON:</p> <p>21 Q. Except for the follow-up interviews where</p> <p>22 you didn't produce contemporaneous notes; is that</p> <p>23 correct?</p> <p>24 MR. COX: Object to the form.</p> <p>25 THE WITNESS: Well, what I've learned</p>
<p style="text-align: right;">Page 594</p> <p>1 Q. Okay. If anyone were to get the</p> <p>2 impression that all of that work that you were</p> <p>3 doing was specific to the Leavitt and Fong cases,</p> <p>4 that would be the wrong impression from the</p> <p>5 testimony that you just gave in response to</p> <p>6 Mr. Cox's questions; correct?</p> <p>7 A. Well, I -- that -- if that were the</p> <p>8 impression, that would be wrong.</p> <p>9 Q. Right. And you talked about talking to</p> <p>10 40 people, but, actually, once you were working on</p> <p>11 the Leavitt and Fong cases, you spent a few</p> <p>12 minutes speaking to Pam Downs -- and that was</p> <p>13 between Hayes and your Leavitt deposition -- and</p> <p>14 then this last time you spent an hour and a half</p> <p>15 speaking to Pam Downs, and I think, an hour or so</p> <p>16 speaking to Ms. -- Ms. French and Giacino;</p> <p>17 correct?</p> <p>18 A. Yes. I spent -- well, I mean, in total</p> <p>19 the number of hours speaking to Ms. Downs and</p> <p>20 Ms. Giacino.</p> <p>21 Q. Right. So that's about three hours total,</p> <p>22 and that's just two individuals, or three</p> <p>23 individuals you were speaking to, and those were</p> <p>24 the follow-up interviews that you just spoke</p> <p>25 about; right?</p>	<p style="text-align: right;">Page 596</p> <p>1 encompasses not just my notes but the materials</p> <p>2 I've assembled. The policies and procedures, the</p> <p>3 supporting documents, that is part of what I</p> <p>4 learned.</p> <p>5 BY MR. SWANSON:</p> <p>6 Q. And I may have asked the question poorly.</p> <p>7 But everything that you learned from</p> <p>8 speaking to people at Johnson & Johnson other than</p> <p>9 the lawyers who have information about document</p> <p>10 retention, document searches, document</p> <p>11 productions, the various platforms in which</p> <p>12 documents are kept, those are reflected in your</p> <p>13 contemporaneous notes that have been attached to</p> <p>14 this transcript; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Except for the follow-up interviews, the</p> <p>17 very brief follow-up interview with Pam Downs</p> <p>18 before the Leavitt, the first volume of the</p> <p>19 Leavitt -- Leavitt and Fong deposition, and then</p> <p>20 you've got some notes that I wouldn't call</p> <p>21 "contemporaneous notes" that are summarized in a</p> <p>22 chart that you produced that you brought with you</p> <p>23 to this -- to the second volume of your deposition</p> <p>24 yesterday; true?</p> <p>25 A. I'm sorry. I heard the words, but I</p>

<p style="text-align: right;">Page 597</p> <p>1 wasn't sure what the question was on the table at 2 that point. 3 Q. Okay. The bottom line is, your -- if you 4 spoke to somebody about these talc-related issues 5 in the work that you just described to Mr. Cox, 6 that's reflected in your contemporaneous notes 7 except for a little bit of your follow-up 8 conversations; correct? 9 A. I would generally agree. 10 MR. COX: Object to the form. 11 BY MR. SWANSON: 12 Q. Okay. And how much have you billed 13 Johnson & Johnson for your work in this case? 14 A. It will be -- you mean the bills that have 15 actually gone out the door? I don't know. It 16 will be about close to probably a hundred 17 thousand. 18 Q. Okay. That's \$500 an hour for 200 hours? 19 A. Yes. 20 Q. I'm terrible at math. 21 And that's a hundred -- that's a hundred 22 thousand dollars just in these two cases; correct? 23 MR. COX: Object to the form. 24 BY MR. SWANSON: 25 Q. Or does that include the prior work that</p>	<p style="text-align: right;">Page 599</p> <p>1 you asked for the holds, you haven't audited holds 2 for Johnson & Johnson to find out whether or not 3 there's been good compliance with those holds, 4 have you? 5 MR. COX: Object to the form. 6 THE WITNESS: I've spoken to people in the 7 records functions to understand how hold programs 8 are delivered, how compliance is measured. I 9 haven't audited individual holds. 10 MR. SWANSON: Move to strike nonresponsive 11 portions. 12 That's all I have. Thank you. 13 MR. COX: One question. 14 MR. SWANSON: Okay. Do you want to come 15 over here for it? 16 MR. COX: No, that's fine. 17 MR. SWANSON: You can bounce it off me. 18 And he can look at me when he's answering. 19 RE-CROSS-EXAMINATION BY MR. COX: 20 Q. Mr. Mittenenthal, did all the work you did 21 for the Hayes case inform the testimony you've 22 given in response to the topics in the deposition 23 notices in the Leavitt and Fong cases? 24 A. Yes, it did. 25 MR. COX: That's all I have.</p>
<p style="text-align: right;">Page 598</p> <p>1 you were talking about? 2 A. That includes the prior work. 3 Q. Okay. Now, you mentioned that you -- and 4 we talked about this last time a little bit -- 5 that you actually looked through several hundred 6 pages of documents that were responsive documents 7 produced by Johnson & Johnson in Fong and Leavitt; 8 correct? 9 A. Yes. 10 Q. And you're aware, though, that something 11 like at least 250,000 different documents were 12 produced; correct? 13 A. Yes. 14 Q. And, even though you've seen the responses 15 to the requests for production and you've seen 16 what was described abstractly in terms of the 17 Excel spreadsheets and the various tabs and the 18 Bates numbers, you didn't systematically go 19 through the production and sort of audit the 20 production and see if this was exactly what was 21 produced in response to different requests, have 22 you? 23 A. That's right. That was not something I 24 viewed as my responsibility. 25 Q. And you have not audited -- even though</p>	<p style="text-align: right;">Page 600</p> <p>1 MR. SWANSON: Okay. 2 THE VIDEOGRAPHER: I'm afraid to say 3 anything. 4 MR. SWANSON: You should be. 5 Let's go off the record. 6 THE VIDEOGRAPHER: This concludes the 7 deposition of James Mittenenthal. 8 Volumes II and III contain eight media 9 disks. These originals are to be retained by 10 Tele-Video Production Services. Telephone is 11 (510) 893-0555. 12 Copies are available to interested parties 13 unless otherwise stipulated. 14 Off the record at 2:05. 15 16 (Whereupon, the deposition was 17 concluded at 2:05 p.m.) 18 19 20 21 22 23 24 25</p>

<div style="text-align: right; font-size: small;">Page 601</div> <p>1 SIGNATURE OF DEPONENT</p> <p>2</p> <p>3 I, the undersigned, JAMES PETER MITTENTHAL, do</p> <p>4 hereby certify that I have read the foregoing</p> <p>5 deposition and find it to be a true and accurate</p> <p>6 transcription of my testimony, with the following</p> <p>7 corrections, if any:</p> <p>8</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 10%; text-align: left;">9 PAGE</th> <th style="width: 10%; text-align: left;">LINE</th> <th style="width: 80%; text-align: left;">CHANGE</th> </tr> <tr><td>10</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>_____</td><td>_____</td></tr> <tr><td>23</td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td></tr> </table> <p style="text-align: center;">_____</p> <p style="text-align: center;">JAMES PETER MITTENTHAL, Date</p>	9 PAGE	LINE	CHANGE	10	_____	_____	11	_____	_____	12	_____	_____	13	_____	_____	14	_____	_____	15	_____	_____	16	_____	_____	17	_____	_____	18	_____	_____	19	_____	_____	20	_____	_____	21	_____	_____	22	_____	_____	23			24			25			
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<div style="text-align: right; font-size: small;">Page 602</div> <p>1 STATE OF CALIFORNIA)</p> <p>2) ss.</p> <p>3 COUNTY OF ALAMEDA)</p> <p>4</p> <p>5 I, EARLY LANGLEY, a Certified Shorthand</p> <p>6 Reporter, State of California, do hereby certify:</p> <p>7 That JAMES PETER MITTENTHAL, in the foregoing</p> <p>8 deposition named, was present and by me sworn as a</p> <p>9 witness in the above-entitled action at the time and</p> <p>10 place therein specified;</p> <p>11 That said deposition was taken before me at</p> <p>12 said time and place, and was taken down in shorthand by</p> <p>13 me, a Certified Shorthand Reporter of the State of</p> <p>14 California, and was thereafter transcribed into</p> <p>15 typewriting, and that the foregoing transcript</p> <p>16 constitutes a full, true and correct report of said</p> <p>17 deposition and of the proceedings that took place;</p> <p>18 IN WITNESS WHEREOF, I have hereunder subscribed my hand</p> <p>19 on October 22, 2018.</p> <p>20</p> <p>21 _____</p> <p>22 EARLY LANGLEY, CSR NO. 3537</p> <p>23 State of California</p> <p>24</p> <p>25</p>																																																				

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Exhibit 171

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(201)494-2727
Attorney(s) for Plaintiff

LOUIS EDLEY

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Plaintiff(s)

vs.

E & B MILL SUPPLY, et als

Defendant(s)

DOCKET NO. L-075913-86

CIVIL ACTION

Stipulation of Dismissal
with prejudice


(as to defendant, Windsor Minerals, Inc.)

The matter in difference in the above entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed without costs against either party, with prejudice as to defendant, Windsor Minerals, Inc.

Dated: July 23, 19 87



By _____
RONALD S. LEVITT
Attorney(s) for Defendant(s)
WINDSOR MINERALS, INC.

By  _____
RONALD B. GRAYZEL
Attorney(s) for Plaintiff(s)
LOUIS EDLEY

NEWMAN, HERMAN, SALTMAN, LEVITT AND FEINSON

A PROFESSIONAL ASSOCIATION

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OUR FILE NO.
11092-L

July 23, 1987

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Edison, New Jersey 08818-2905

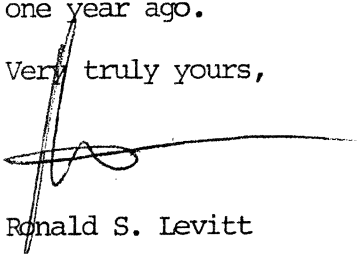
RE: Edley -v- Madsen & Howell, Windsor Minerals, Inc., et als

Dear Mr. Grayzel:

Enclosed please find an Affidavit on behalf of Windsor Minerals, Inc., signed by Roger N. Miller, President of Windsor Minerals, Inc. since 1968. Also enclosed you will find an assay from McCrone Environmental Services, Inc. I trust that these documents will now enable you to sign a Dismissal as was done in the Yuhas file. I have taken the liberty of drafting the Dismissal and enclosing the same for your signature along with a self-addressed stamped envelope.

If you are still unable or unwilling to sign the Dismissal, please forward immediately your client's answers to supplemental interrogatories which were served upon you almost one year ago.

Very truly yours,


Ronald S. Levitt

RSL/gbf
Encl.

cc: Michael M. Tanenbaum, Esq., McCarter & English
Thomas M. Kelly, Esq., Morley, Cramer, Tansey, Haggarty & Fanning
Anthony Luongo, Esq., Donington, Leroe, Toland & Luongo

Certified Mail, Return Receipt Requested

-----	:	
LOUIS EDLEY,	:	SUPERIOR COURT
	:	OF NEW JERSEY
Plaintiff,	:	LAW DIVISION
	:	MIDDLESEX COUNTY
vs.	:	
	:	DOCKET NO. L-075913-86
WINDSOR MINERALS, INC.;	:	
NICOLET, INC., as Successor-	:	CIVIL ACTION
in-Interest to Keasby &	:	
Mattison; GAF CORP., RUBEROID,	:	AFFIDAVIT
GAF CORP., as Successor-in-	:	
Interest to Ruberoid; MADSEN	:	
& HOWELL, INC.; JOHN DOE #1	:	
to #50 (Fifty Unidentified	:	
Manufacturers and Distributors	:	
of asbestos-containing	:	
products),	:	
	:	
Defendants.	:	
-----	:	

STATE OF VERMONT :
SS.
COUNTY OF WINDSOR :

ROGER N. MILLER, of full age, being duly sworn, according to law, upon his oath, deposes and says:

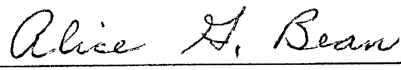
1. I am the President of Windsor Minerals, Inc. and have held that position since 1968 when Windsor Minerals, Inc. was first formed.

2. The exclusive business of Windsor Minerals, Inc. is, and has been for the last eighteen years, the mining and milling of talc from a single mining district in Windsor, Vermont. That mining district is the exclusive source of talc for all of the Johnson's Baby Powder sold in the United States. In addition to supplying the talc for Johnson's Baby Powder, Windsor Minerals, Inc. also sells a portion of its product to independent industrial users.

3. All of the talc mined by Windsor Minerals, Inc., whether it is ultimately sold to industrial users or used in Johnson's Baby Powder, is sampled and tested for the presence of asbestos. No evidence of the presence of asbestos in Windsor Minerals' product has ever been revealed by this testing. Attached hereto as Exhibit "A" is a true copy of a recent report of such testing.


ROGER N. MILLER

Sworn to and subscribed
before me this 13 day
of July, 1987.



Notary Public
My Commission Expires:
Feb. 10, 1991



mccrone environmental services, inc.

200 OAKBROOK BUSINESS CENTER
5500 OAKBROOK PARKWAY
NORCROSS, GA 30093 • 404-449-8461

28 January 19876

Windsor Minerals, Inc.
P. O. Box 680
Windsor, Vermont 05089

RECEIVED

FEB 2 1987

W. M. I.

Attention: Mr. Roger N. Miller, President

Re: McCrone Project No. ME-3241

Dear Mr. Miller:

Under your Purchase Order QC-0548, we received nineteen talc samples for asbestos analysis by transmission electron microscopy. The samples were labelled as follows:

WMI 86-10	WMI 86-14	WMI 86-18	WMI 86-22	WMI 86-26
WMI 86-11	WMI 86-15	WMI 86-19	WMI 86-23	WMI 86-27
WMI 86-12	WMI 86-16	WMI 86-20	WMI 86-24	WMI 86-32
WMI 86-13	WMI 86-17	WMI 86-21	WMI 86-25	

Examination found no quantifiable amounts of asbestiform minerals. The limit of detection for each sample is below 0.001 weight percent.

Thank you for consulting McCrone Environmental Services, Inc.

Sincerely,

Thomas Kremer

Thomas Kremer
Electron Microscopist

James R. Millette

James R. Millette, Ph.D.
Manager, Laboratory Services

TK/JRM/mtw

cc: 1) Windsor Minerals, Inc.
Windsor VT
1) Mr. Roger N. Miller, President

EXHIBIT A

a subsidiary of walter c. mccrone associates, inc.

2820 SOUTH MICHIGAN AVENUE • CHICAGO, ILLINOIS 60616 • 312-842-7100

Exhibit 172

\$ 40

REC'D. & FILED
SUPERIOR COURT
OF NEW JERSEY

LAW

UNIL

OCT 3 1986

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M.V. 9
JOHN M. MAYSON
CLERK

SUPERIOR COURT OF N.J.
PAID

NEWMAN, HERMAN, SALTMAN, LEVITT & FEINSON, P.A.

☒ PRINCETON RD

☐ 281 E MAIN ST.

BOX 769

SOMERVILLE, N. J.

EAST WINDSOR, N. J.

(201) 725-1338

(609) 443-4900

ATTORNEYS FOR Defendant, Windsor Minerals, Inc.

JURY

Plaintiff

ALEX YUHAS and JEAN YUHAS, his wife,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

vs.

Docket No. L-029706-84

Defendant

E&B MILL SUPPLY; MADSEN & HOWELL; GAF; RUBEROID;
GAF as Successor-in-Interest to Ruberoid;
CENTRAL JERSEY SUPPLY CO.; ELIZABETH INDUSTRIAL,
Division of Charles F. Guyon, Inc., as Successor-
in-Interest to Elizabeth Hardware; ZESTON; WINDSOR MINERALS, INC.; NICOLET, INC., as Successor-in-
Interest to Keasbey & Mattison; JOHN DOE #8 to #100;
(Forty three unidentified manufacturers and suppliers
of Asbestos and Asbestos Products to Plaintiff's
Places of Employment).

09
CIVIL ACTION
ASBESTOS LITIGATION
ANSWER, CROSSCLAIM AND
DEMAND FOR TRIAL BY JURY

Windsor Minerals, Inc., having offices in the Town of Windsor and State
of Vermont, by way of Answer to plaintiffs' Complaint says:

FIRST COUNT

1. This defendant does not have sufficient information to admit or
deny the allegations contained herein and, accordingly, plaintiffs are
left to their proofs.

2. This defendant does not have sufficient information to admit or
deny the allegations contained herein and, accordingly, plaintiffs are
left to their proofs.

3. This defendant does not have sufficient information to admit or deny the allegations contained herein and, accordingly, plaintiffs are left to their proofs.

4. Denied, and plaintiffs are left to their proofs.

5. Denied, and plaintiffs are left to their proofs.

6. Denied, and plaintiffs are left to their proofs.

WHEREFORE, the defendant, Windsor Minerals, Inc., demands that the First Count of plaintiffs' Complaint be dismissed with prejudice and without costs.

SECOND COUNT

1. This defendant repeats the Answer as set forth above and makes the same a part hereof as though set forth at length herein.

2. Denied, and plaintiffs are left to their proofs.

3. Denied, and plaintiffs are left to their proofs.

4. Denied, and plaintiffs are left to their proofs.

WHEREFORE, the defendant, Windsor Minerals, Inc., demands that the Second Count of plaintiffs' Complaint be dismissed with prejudice and without costs.

THIRD COUNT

1. This defendant repeats the Answer as set forth in the First and Second Counts above and makes the same a part hereof as though set forth at length herein.

2. Denied, and plaintiffs are left to their proofs.

WHEREFORE, the defendant, Windsor Minerals, Inc., demands that the Third Count of plaintiffs' Complaint be dismissed with prejudice and without costs.

SEPARATE DEFENSES

1. Plaintiffs are barred from recovery by reason of the limits set forth in the statute of limitations.

2. Plaintiffs are barred from recovery by reason of the limits set forth in the statute of limitations.

3. Any and all injuries and damages allegedly sustained by the plaintiffs were the result of the carelessness and negligence of third persons over whom this defendant had no control.

4. This defendant never warranted, either expressly or impliedly, any products which were allegedly used by the plaintiffs' claim based on warranties, either expressed or implied, cannot be sustained as against this defendant.

5. The plaintiffs were guilty of contributory negligence with respect to any injuries allegedly caused by this defendant, and should this defendant be found guilty of any negligence with respect to the plaintiffs' damages, which liability is denied, the comparative contributory negligence of the plaintiffs were greater than that of this defendant, barring any recovery of the plaintiffs as against this defendant, pursuant to N.J.S.A. 2A:15-5.1.

6. The plaintiffs were cognizant of and had full knowledge of all the facts, circumstances and conditions existing with respect to the use of any products allegedly manufactured by this defendant as referred to in the Complaint and voluntarily assumed the risks therefrom or attendant thereto.

7. This defendant denies any conduct on their part which would justify an award of punitive damages in favor of the plaintiffs.

8. At the time and place mentioned in the Complaint, this defendant was not guilty of any negligence, whether by act of commission or omission, which was a proximate cause of the alleged accident, injuries and damages of which plaintiffs complain.

9. This defendant reserves the right to move at or before the time of trial to dismiss the Complaint on the grounds that the Court lacks personal jurisdiction over this defendant.

10. This defendant reserves the right to move at or before the time of trial to dismiss the Complaint on the grounds that the Court lacks jurisdiction over the subject matter of the Complaint.

11. This defendant reserves the right to move to dismiss the Complaint on the grounds that the plaintiffs failed to give notice to the defendant of the alleged breach of express or implied warranty contrary to the provisions of the applicable statutes of the State of New Jersey.

12. This defendant reserves the right to move to dismiss the plaintiffs' Complaint on the grounds that the plaintiffs' Complaint and each Count thereof fails to state a claim upon which relief can be granted.

13. This defendant denies that willfully, wantonly or intentionally withheld or prevented the dissemination of information concerning the alleged hazardous effects of asbestos products and further denies that they were guilty of fraudulent misrepresentation to the plaintiffs and members of the general public and further denies that they conspired to withhold the aforesaid information from the plaintiffs and other members of the general public.

14. The incident, injuries and damages complained of were caused by unauthorized, unintended or improper use of the product complained of and was the result of the failure to exercise reasonable and ordinary care, caution or vigilance.

15. This defendant denies the applicability of the concept of strict liability in tort to this litigation.

CROSSCLAIM

Defendant, Windsor Minerals, Inc., by way of Crossclaim against co-defendants, ESB Mill Supply, Madsen & Howell, GAF, Ruberoid, GAF as Successor-in-Interest to Ruberoid, Central Jersey Supply Co., Elizabeth Industrial, Division of Charles F. Guyon, Inc., as Successor-in-Interest to Elizabeth Hardware, Zeston, Nicolet, Inc., as Successor-in-Interest to Keasbey & Mattison, John Doe #8 to #100, (Forty-three unidentified manufacturers and suppliers of Asbestos and Asbestos Products to Plaintiffs'

WMAN, HERMAN
LYMAN, LEVITT
FEINSON, PA

Places of Employment, says:

FIRST COUNT

Defendant, Windsor Minerals, Inc., denies that they were negligent and state that the accident was the direct and proximate result of the actions of Defendants, E&B Mill Supply, Madsen & Howell, GAF, Ruberoid, GAF as Successor-in-Interest to Ruberoid, Central Jersey Supply Co., Elizabeth Industrial, Division of Charles F. Guyon, Inc., as Successor-in-Interest to Elizabeth Hardware, Zeston, Nicolet, Inc., as Successor-in-Interest to Keasbey & Mattison, John Doe #8 to #100, (Forty three unidentified manufacturers and suppliers of Asbestos and Asbestos Products to Plaintiffs' Places of Employment), and that they were solely responsible for the injuries sustained by the plaintiffs but in the event this defendant is found guilty of contributory negligence, defendant, Windsor Minerals, Inc., demands contribution under and by reason of the Joint Tortfeasors Contribution Act, N.J.S. 2A:53a-1, et seq., and as provided by the provisions of the Comparative Negligence Act, N.J.S. 2A:15-5.3, for a proportionate share of all of which the plaintiffs may recover.

SECOND COUNT

The defendant, Windsor Minerals, Inc., further demands and makes a claim for indemnity against the defendant, in the event it be deemed that the damages claimed in the Complaint were occasioned by the primary negligence of the said co-defendants, should the defendant, Windsor Minerals, Inc., be found secondarily liable to the plaintiffs herein.

THIRD COUNT

Defendant, Windsor Minerals, Inc., hereby demands common law and contractual indemnification both expressed and implied from the co-defendants.

FOURTH COUNT

The defendant, Windsor Minerals, Inc., further demands and makes a claim for indemnification against the co-defendants in the event it is deemed that they were manufacturers and distributors to this defendant of products alleged

IMMAN. HERMAN
LYMAN. LEVITT
FEINSON PA

by the plaintiffs to give rise to liability under theories of strict liability, warranty and products liability.

ANSWER TO ALL CROSSCLAIMS

The defendant, Windsor Minerals, Inc., denies any and all Crossclaims for Contribution and Indemnification filed or to be filed against this defendant in the within action.

DEMAND FOR ANSWERS TO INTERROGATORIES

This defendant hereby makes demand upon the plaintiffs for answers to interrogatories (Standard Form A) as directed by Order of the Honorable John E. Keefe, J.S.C., dated January 25, 1982. These interrogatories may be obtained from the Court upon request.

JURY DEMAND

Defendant, Windsor Minerals, Inc., hereby demands a trial by a six man jury on all issues in the above captioned matter.

DEMAND FOR STATEMENT OF DAMAGES

PLEASE TAKE NOTICE that pursuant to Rule 4:5-2, the Defendant filing this Answer requires that within five days you furnish its attorney with a Statement of the amount of damages claimed.

CERTIFICATION

I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 4:6, and that a true copy of same has been served upon my adversary by first class mail on even date hereof.

NEWMAN, HERMAN, SALTMAN, LEVITT & FEINSON
Attorneys for Defendant, Windsor Minerals

BY: 

EDWARD H. HERMAN, ESQ.

Date: September 30, 1986

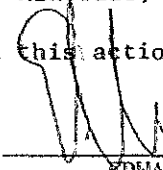
HERMAN
LEVITT
ON PA

CERTIFICATION

PURSUANT TO RULE 4:5-1

Defendant hereby certifies the matter in controversy is not the subject of any other action pending in any Court, or of a pending arbitration proceeding and no other action or arbitration proceeding is contemplated.

To the best of the defendant, Windsor Minerals, Inc., knowledge, there are no other parties who should be joined in this action.



EDWARD H. HERMAN, ESQ.

EDWARD H. HERMAN
JALTMAN, LEVITT
& FENSON, P.A.

REC'D. & FILED
SUPERIOR COURT
OF NEW JERSEY

JAN 18 1987

M.V. 24
JOHN M. MAYSON
CLERK

Attorney(s): LEVINSON, CONOVER, AXELROD, WHEATON & GRAYZEL

Office Address & Tel. No.: 2 Lincoln Hwy., Edison, NJ 08818

Attorney(s) for Plaintiffs (201) 494-2727

ALEX YUHAS and JEAN YUHAS,
his wife

Plaintiff(s)

vs.

E & B MILL SUPPLY, et als.

Defendant(s)

SUPERIOR COURT OF NEW JERSEY

MIDDLESEX

COUNTY

LAW

DIVISION

DOCKET NO. L-029706-84

CIVIL ACTION

Stipulation of Dismissal

with prejudice

(as to defendant, Windsor Minerals, Inc.)

The matter in difference in the above entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed without costs against either party.

Dated: January 6 19 87 .
NEWMAN, HERMAN, SALTMAN, LEVITT
& FEINSON

By

Edward H. Herman

Attorney(s) for Defendant(s) Windsor
Minerals, Inc.

LEVINSON, CONOVER, AXELROD, WHEATON
& GRAYZEL

By

Ronald B. Grayzel

Attorney(s) for Plaintiff(s)

Exhibit 173

1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION - MIDDLESEX COUNTY
3 DOCKET NO. MID-1809-17AS
4 APPELLATE DOCKET NO. _____
5
6 DOUGLAS AND ROSALYN BARDEN,)
7) TRIAL
8 Plaintiff,)
9)
10 v.)
11) (VOLUME 1 OF 2)
12 BRENNTAG NORTH AMERICA, et al.,)
13 Defendants.)
14 -----)
15 DAVID CHARLES ETHERIDGE AND)
16 DARLENE PASTORE ETHERIDGE,) MID-L-0932-17AS
17)
18 Plaintiffs,)
19)
20 v.)
21)
22 BRENNTAG NORTH AMERICA, et al.,)
23 Defendants.)
24 -----)
25 D'ANGELA McNEILL-GEORGE,)
MID-L-7049-16AS
Plaintiff,)
v.)
BRENNTAG NORTH AMERICA, et al.,)
Defendants.)
-----)
WILLIAM AND ELIZABETH RONNING,)
MID-L-6040-17AS
Plaintiffs,)
v.)
BRENNTAG NORTH AMERICA, et al.,)
Defendants.)
Job No. NJ3446618

<p style="text-align: right;">Page 2</p> <p>1 2 Place: Middlesex County Courthouse 56 Paterson Street 3 New Brunswick, New Jersey 08903 4 Date: Tuesday, July 23, 2019 5 9:00 a.m. (Volume 1 of 2) 6 (Pages 1 - 200) 7 8 9 10 11 Before: 12 Hon. Ana C. Viscomi, J.S.C. 13 14 15 16 17 TRANSCRIPT ORDERED BY: 18 MOSHE MAIMON ESQ. LEVY KONIGSBERG 19 20 21 22 SILVIA P. WAGE, CCR CRR PRIORITY ONE 290 West Mount Pleasant Avenue 23 Livingston, New Jersey 07039 (718) 983-1234 24 E-mail: Plsteno@veritext.com 25</p>	<p style="text-align: right;">Page 4</p> <p>1 I N D E X 2 WITNESS: JOHN HOPKINS PAGE 3 CONTINUED DIRECT EXAMINATION BY MR. PANATIER 6 4 E X H I B I T S 5 NO. DESCRIPTION PAGE 6 Plaintiff's Exhibit 1297 14 Plaintiff's Exhibit 2049 115 7 Plaintiff's Exhibit 2321 129 Plaintiff's Exhibit 2416 43 8 Plaintiff's Exhibit 2417 43 Plaintiff's Exhibit 2423 28 9 Plaintiff's Exhibit 2434 21 Plaintiff's Exhibit 2450 91 10 Plaintiff's Exhibit 2451 99 Plaintiff's Exhibit 2452 93 11 Plaintiff's Exhibit 2454 102 Plaintiff's Exhibit 2455 96 12 Plaintiff's Exhibit 2506 107 Plaintiff's Exhibit 2525 137 13 Plaintiff's Exhibit 2536 140 Plaintiff's Exhibit 2581 162 14 Plaintiff's Exhibit 2601 131 Plaintiff's Exhibit 2669 165 15 Plaintiff's Exhibit 2723 176 Plaintiff's Exhibit 2848 62 16 Plaintiff's Exhibit 2849 65 Plaintiff's Exhibit 3051 161 17 Plaintiff's Exhibit 3083 151 Plaintiff's Exhibit 3121 155 18 Plaintiff's Exhibit 3224 157 Plaintiff's Exhibit 3441 82 19 Plaintiff's Exhibit 3446 188 Plaintiff's Exhibit 3695-26 41 20 Plaintiff's Exhibit 3695-30 178 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 CHRISTOPHER PLACITELLA, ESQ. COHEN PLACITELLA & ROTH 127 Maple Avenue 4 Red Bank, New Jersey 07701 -and- 5 MOSHE MAIMON, ESQ. LEVY KONIGSBERG 800 Third Avenue 6 11th Floor New York, New York 10022 7 -and- 8 CHRIS J. PANATIER, ESQ. SIMON GREENSTONE PANATIER 9 1201 Elm Street Suite 3400 10 Dallas, Texas 75270 Attorneys for Plaintiffs, Douglas and 11 Rosalyn Barden, Charles Etheridge and Darlene Pastore Etheridge, D'Angela 12 McNeill-George, William and Elizabeth Ronning 13 14 DIANE P. SULLIVAN, ESQ. JACK NOLAN, ESQ. 15 WEIL GOTSCHAL & MANGES LLP 17 Hulfish Street Suite 201 16 Princeton, New Jersey 08542 -and- 17 JOHN C. GARDE, ESQ. McCARTER & ENGLISH 18 Four Gateway Center 100 Mulberry Street 19 Newark, New Jersey 07102 Attorneys for Defendants Johnson & Johnson, 20 and Johnson & Johnson Consumer, Inc. 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 (Jury enters.) 2 THE COURT: Good morning, everyone. 3 Please be seated. Make sure cell phones are turned 4 off. 5 Today is July 23, 2019. This is a 6 continued trial in the matter of Douglas and Rosalyn 7 Barden versus Johnson & Johnson, David and Darlene 8 Etheridge versus Johnson & Johnson, D'Angela McNeill 9 versus Johnson & Johnson and William and Elizabeth 10 Ronning versus Johnson & Johnson. 11 May I have appearances please for the 12 Plaintiffs. 13 MR. MAIMON: Thank you. Good 14 morning, your Honor. Moshe Maimon, Chris Panatier 15 and Christopher Placitella for the Bardens, the 16 Etheridges, the Ronnings and Ms. McNeill. 17 THE COURT: Thank you. On behalf of 18 the Defendants, Johnson & Johnson and Johnson & 19 Johnson Consumer Incorporated. 20 MS. SULLIVAN: Good morning, your 21 Honor. Hi, everyone, Diane Sullivan and Jack Nolan 22 for J&J. 23 MR. NOLAN: Good morning. 24 THE COURT: So Members of the Jury 25 yesterday, we began with the direct examination of</p>

<p style="text-align: right;">Page 6</p> <p>1 Dr. John Hopkins, who is the corporate 2 representative for the Johnson & Johnson Companies. 3 We're going to continue with that today. 4 Whenever you're ready, Mr. Panatier. 5 MR. PANATIER: Thank you, your Honor. 6 Good morning, everyone. 7 CONTINUED DIRECT EXAMINATION BY MR. PANATIER: 8 Q. Good morning, Dr. Hopkins. 9 A. Good morning. 10 THE WITNESS: Good morning, Jury. 11 THE COURT: Oh, I'm sorry, yes, 12 please distribute the notebooks. The Jurors just 13 hand the envelopes back to the officer when you're 14 done, thank you. 15 Officer, can you just pick up those 16 envelopes and put them to the side. Thank you. 17 And now whenever you're ready. Thank 18 you. 19 BY MR. PANATIER: 20 Q. Alright. Sir, yesterday I asked you 21 a question about whether or not Johnson & Johnson 22 understood that people would put powder in their 23 sheets to smell good or feel fresh, right? 24 A. You did. 25 Q. And did you say at that point you had</p>	<p style="text-align: right;">Page 8</p> <p>1 MS. SULLIVAN: And, your Honor, we've 2 done investigation. It is actually a J&J document. 3 My objection relates to the time frame. 2014 4 post-dates anybody's use in this case and so it's 5 not relevant. 6 THE COURT: Okay. So that's -- 7 MS. SULLIVAN: This is the e-mail 8 that's attached. 9 THE COURT: Got it. Okay. 10 MR. PANATIER: Our argument is that 11 it's a foreseeable use. 12 MS. SULLIVAN: 2014? Stretch. 13 MR. PANATIER: It's a realistic 14 foreseeable use. 15 THE COURT: Look, there have -- 16 certainly, in the course of this litigation, I've 17 read testimony from various individual, Plaintiffs 18 that have indicated that. But in 2014 to say that 19 it's a foreseeable -- documents say that it's a 20 foreseeable use, I mean, unless you have something 21 else. 22 MR. PANATIER: Well... 23 THE COURT: This witness has never, 24 you know, heard of it. It's 2014. We're talking 25 about the various Plaintiffs' use going back</p>
<p style="text-align: right;">Page 7</p> <p>1 -- you were unaware of that ever happening? 2 A. On a personal basis, I was not aware 3 that people did that. But, you know, if you have 4 different information... 5 Q. This will be Exhibit 3695. 6 MS. SULLIVAN: Your Honor, can we 7 have a sidebar on this? 8 THE COURT: Sure. 9 MS. SULLIVAN: Thank you. 10 (Sidebar.) 11 MR. PANATIER: 3695-25. 12 THE COURT: That's right. I have 13 yesterday's copy. So I will give one back to you, 14 just in case. We'll spread it around. 15 MR. PANATIER: So we located a copy 16 with a Bates Stamp. 17 THE COURT: Hold on, hold on. 18 Okay. So, for the record, this was 19 the issue that we explained yesterday with regard to 20 quote, unquote, "native" documents, which is the 21 first time I've ever heard of anything like that. 22 MR. PANATIER: So we got one -- so 23 there's -- they produced -- there's got to be 30 24 copies of this in the production. So we finally got 25 one with a Bates Stamp.</p>	<p style="text-align: right;">Page 9</p> <p>1 decades. To say that this is foreseeable without 2 anything more -- 3 MR. PANATIER: Okay. 4 MS. SULLIVAN: Thank you. 5 THE COURT: Okay. 6 MS. SULLIVAN: Thank you, your Honor. 7 (Sidebar ends.) 8 BY MR. PANATIER: 9 Q. Alright. Yesterday, I brought up 10 that we finished talking about Dr. Langer. Now, 11 we're going to talk about the other Dr. L, Dr. 12 Lewin, okay? 13 A. Yes. 14 Q. And you're familiar with this -- with 15 the Dr. Lewin situation in the early '70s, right? 16 A. Yes. 17 Q. Now, Dr. Lewin was retained by the 18 FDA to test cosmetic talc samples, right? 19 A. Yes. They gave him that as a 20 project. 21 Q. Right. So, if you will turn to -- 22 there is a tab marked August 3rd, 1972. If you can 23 turn to that please. 24 (There is a discussion off the 25 record.)</p>

<p style="text-align: right;">Page 10</p> <p>1 THE COURT: I'm sorry, Counsel, 2 what's the year? What's the date? 3 MR. PANATIER: This is August 3rd, 4 1972, your Honor. 5 THE COURT: Thank you. 6 MR. PANATIER: And this is already in 7 evidence from last week. It's Plaintiffs' 8 Exhibit 2852. And then to help us, this is part of 9 our Exhibit 2852. 10 BY MR. PANATIER: 11 Q. Here. 12 THE COURT: Thank you. 13 A. Thank you. 14 Q. That's the back part of the exhibit. 15 So here we know that on August 3rd of 16 1972, Dr. Lewin issued his report and the FDA -- 17 there you go. 18 Seymour Lewin communicated it to the 19 FDA, correct? 20 A. Yes. 21 Q. Okay. And in this set, he had looked 22 at a 102 samples, right? 23 A. Yes. 24 Q. Now, he was a professor at NYU, 25 right?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Okay. Now, if you'll go to page... 2 A. I've got 102 up to Page 6 but... 3 Q. Right. In this one he had looked at 4 102. 5 A. Uh-huh. 6 Q. And by the time he was done, by 1973, 7 he had looked at about 195 -- 8 A. Yeah. 9 Q. -- correct? 10 A. Yes, on the later, yes. 11 Q. Right. Now these are from the FDA, 12 so they don't number their pages. But it is the 13 fifth page in. It's this one here. 14 It says, "Products having small 15 amounts of chrysotile more than 1 percent but not 16 more than 5 percent by weight," right? 17 A. Yes. 18 Q. Do you see the sample 84, which is 19 Shower to Shower, is listed as having 5 percent 20 chrysotile, correct? 21 A. You read what is written. 22 Q. And sample 84 is Shower to Shower, 23 correct? 24 A. I don't have the key. 25 Q. We literally just looked at it.</p>
<p style="text-align: right;">Page 11</p> <p>1 A. He was, yes, at that time, yes. 2 Q. He was a world-renowned mineralogist, 3 wasn't he? 4 A. I don't know "world-renowned." He 5 was well-respected. 6 Q. Okay. And you know that before he 7 was even retained by the FDA to do this work, he was 8 already working for the talc industry, correct? 9 A. I didn't know that, no. But, you 10 know -- 11 Q. We'll look at a document. 12 A. If you can document it, I'll believe 13 you. 14 Q. So he's got the product numbers on 15 the side. And then if you turn to the back, he 16 lists out some of those different products. There's 17 a product called Cashmere Bouquet. We just heard 18 about that popular case. 19 And there's Sample 84, Shower to 20 Shower, right? 21 A. Yes. 22 Q. Okay. By the time he was finished, 23 he had looked at close to a 195 different samples, 24 right? 25 A. Yes.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. I don't have the key here so... 2 Q. Here it is. Oh, that's 29, baby 3 powder. 4 A. The key is on Page 10. 5 Q. Right. Shower to Shower, right, 84? 6 A. Yes. It's on Page 10. 7 Q. And Shower to Shower is sample 84, 8 correct, Dr. Hopkins? 9 A. That is what it states on Page 10. 10 Q. So that's 72. 11 Now, that's August 3rd. 12 Let's skip all the way to July 31st 13 of '73. 14 MR. PANATIER: This is Plaintiffs' 15 Exhibit 1297, your Honor. I believe the Defense 16 offered their version, but we'll offer ours. 17 It's... 18 MS. SULLIVAN: It's the same 19 document, right? 20 MR. PANATIER: I believe it's the 21 same document, but just in case there's anything 22 missing. We'll offer Plaintiff's Exhibit 1297. 23 THE WITNESS: What was the date 24 again? 25 MR. PANATIER: July 31st, 1973.</p>

<p style="text-align: right;">Page 14</p> <p>1 THE COURT: Counsel, is there any 2 objection? 3 MS. SULLIVAN: I'm not sure why we 4 need two of the same document, your Honor, but I 5 don't care. No objection. 6 THE COURT: So admitted as previously 7 admitted and readmitted again. 8 MR. PANATIER: Thank you. 9 (Plaintiff's Exhibit 1297 was moved 10 into evidence.) 11 BY MR. PANATIER: 12 Q. Before we look at that one -- you 13 found it? 14 A. Yes, I found it. 15 Q. The one with the seal? 16 A. Yes. 17 Q. The second part of the previous 18 document? 19 A. Yes. 20 Q. Let's take a look at that. 21 That's an FDA document provided through 22 FOIA, right, you see that? 23 A. Yes. 24 Q. If you turn to the second to last 25 page, just so we can get a full picture of Lewin's</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes. 2 Q. XRD is the non-microscope analytical 3 tool that has a detection limit of about half a 4 percent, right? 5 A. Yeah, .3 to .5 depending on the speed 6 at which you run the machine. 7 Q. Alright, sir. 8 So now looking at July 31st, 1973, 9 now this was Lewin's final report, correct? 10 A. I believe so. 11 Q. Okay. But let's look at what -- this 12 is from the FDA, correct, sir? 13 A. Yes. 14 Q. Okay. Now let's look at what Dr. 15 Weissler says here. He's at the FDA, true? 16 A. Yes. 17 Q. Okay. It says, "I asked Dr. Lewin in 18 December of '71 to undertake asbestos analyses in 19 100 samples of cosmetic powders. The scope was 20 expanded on two subsequent occasions to include a 21 total of 195. I chose Dr. Lewin for this work 22 because he is an internationally-recognized expert 23 on mineralogical chemistry," right? 24 So, according to the FDA, he was an 25 internationally-recognized expert on mineralogical</p>
<p style="text-align: right;">Page 15</p> <p>1 analysis. You can see that this is on New York 2 University letterhead. Do you see that? 3 A. Yes. 4 Q. And it's got some other products. 5 Now, it looks like it's Products 13 6 through 38 on the side. Do you see that, but it's 7 kind of cut off? 8 A. On this version, it's 113 to 138. 9 Q. Well, look on the next page. You can 10 see that it's 113 through 138, but on the results it 11 looks like it's cut off, correct? 12 A. Yes. 13 Q. Okay. So, just to get our bearings, 14 we know that 131 through 138 were also Johnson & 15 Johnson products, correct? 16 A. Yes. 17 Q. There's two medicated powders, 18 there's three Shower to Showers and it looks like 19 there's three baby powders, right? 20 A. Yes. 21 Q. Okay. He tested a total of 11 22 Johnson & Johnson products, correct? 23 A. On this project, yes. 24 Q. Yes. Okay. We know that he was 25 doing XRD, correct?</p>	<p style="text-align: right;">Page 17</p> <p>1 chemistry, correct? 2 A. Yes, you read what was written. 3 Q. Yeah. "And because he is a member of 4 the academic community and, therefore, likely to be 5 impartial in a confrontation between industry and 6 government. Furthermore, his competence had 7 previously been recognized by industry by virtue of 8 their own use of him as a consultant which appeared 9 to confer a desirable immunity against possible 10 industry attacks on the validity of the results." 11 Now, we know that Dr. Lewin was not 12 immune to attacks from industry, correct? 13 A. Yes. 14 Q. Okay. So let's look at how these 15 results evolved, okay. 16 So here's sample 84. If you go to 17 the page at the bottom, there's a Bates Stamp 18 HHS220, right? And 73 he goes from 5 percent to 19 questionable, right? 20 A. Yes. 21 Q. Alright. In 29 and 30 on Page 226 -- 22 oh, sorry, 29 and 30 are J&J Baby Powder, correct? 23 A. I believe they were, yes. 24 Q. J&J Baby Powder and medicated powder. 25 And then here's the list again. We</p>

<p style="text-align: right;">Page 18</p> <p>1 can see 131 to 138 are the J&J products, correct?</p> <p>2 A. Yes.</p> <p>3 Q. They all went to ND, non-detect,</p> <p>4 right, from 1972?</p> <p>5 A. On the final version that he's got</p> <p>6 here, the later 1973 report it states non-detect.</p> <p>7 Q. Right. In fact, for most of them --</p> <p>8 here, we can look at them, right.</p> <p>9 So let me go to 181 ND, 82, 83</p> <p>10 question mark, 84, 85 ND, 186 question mark, right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Oh, let's look at 131 through</p> <p>13 138. Here we go. Here we are. Look, 131, 138</p> <p>14 those are all ND now, correct?</p> <p>15 A. Yes. On this final version, he's</p> <p>16 written what he's written, ND.</p> <p>17 Q. Now, it says, X-ray diffraction,</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Now, you know that he only did the</p> <p>21 X-ray diffraction the one time, correct?</p> <p>22 A. I don't know that, no.</p> <p>23 Q. Okay.</p> <p>24 A. I don't -- I mean, scientists --</p> <p>25 yeah, I've done these sort of things and you often</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. PANATIER: Well, I'll object to</p> <p>2 nonresponsive, your Honor.</p> <p>3 THE WITNESS: Okay.</p> <p>4 THE COURT: The jury will not</p> <p>5 consider that testimony. It's stricken.</p> <p>6 Please answer the question he asked.</p> <p>7 THE WITNESS: I beg your pardon. Ask</p> <p>8 the question again.</p> <p>9 BY MR. PANATIER:</p> <p>10 Q. Yes. You've reviewed all the</p> <p>11 relevant documents in the case, right, you told us</p> <p>12 that yesterday?</p> <p>13 A. I believe I have, yes.</p> <p>14 Q. Okay. So, if you reviewed all the</p> <p>15 relevant documents in the case, I expect that you</p> <p>16 would have reviewed a document dated August 14th,</p> <p>17 1972. And there's two of them. They should be</p> <p>18 right next to each other in your binder, yeah, on</p> <p>19 both of them.</p> <p>20 That one and the next one, yes.</p> <p>21 MR. PANATIER: These will be</p> <p>22 Exhibits 2423 and 2424.</p> <p>23 Q. Have you found those two dated</p> <p>24 August 14, 1972?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 19</p> <p>1 do duplicate or replicates --</p> <p>2 Q. You've done X-ray diffraction?</p> <p>3 A. No, no, with analyses you can do --</p> <p>4 scientists may well do more than one just to check</p> <p>5 the results.</p> <p>6 Q. My question isn't about what you do.</p> <p>7 My question is about what Dr. Lewin did. So</p> <p>8 my question is, did Dr. Lewin do X-ray diffraction</p> <p>9 more than once on these?</p> <p>10 A. I don't know. That's not stated.</p> <p>11 Q. And between 1972 and 1973, what did</p> <p>12 he do that brought him from finding asbestos in some</p> <p>13 of these to non-detect in virtually all of them but</p> <p>14 for 84 where there is a question mark? What did he</p> <p>15 do?</p> <p>16 A. I don't know what he did. I can</p> <p>17 speculate. He checked again with his results. But</p> <p>18 that's no more than speculation.</p> <p>19 Q. Well, you said you've seen all the</p> <p>20 relevant documents in the case, right?</p> <p>21 A. Well, his project was sponsored by</p> <p>22 the Food and Drug Administration.</p> <p>23 MR. PANATIER: I'm going to object to</p> <p>24 nonresponsive.</p> <p>25 Q. The question was --</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. Let's go to the one -- since</p> <p>2 they have the same date, let's go to the one that</p> <p>3 says, "talc asbestos summary of FDA meeting</p> <p>4 8/11/72," to Dr. R.A. Fuller." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay, good. Now, that is a Johnson &</p> <p>7 Johnson document, do you see it's from W. Nashed to</p> <p>8 R.A. Fuller?</p> <p>9 A. It is, yes.</p> <p>10 MR. PANATIER: Okay. We offer this</p> <p>11 into evidence, Exhibit 2424.</p> <p>12 MS. SULLIVAN: No objection.</p> <p>13 THE COURT: So admitted.</p> <p>14 (Plaintiff's Exhibit 2434 was moved</p> <p>15 into evidence.)</p> <p>16 BY MR. PANATIER:</p> <p>17 Q. This is the document we're looking at</p> <p>18 here, sir. And we know that this is, approximately,</p> <p>19 11 days after Lewin's initial report comes out. So</p> <p>20 they have a meeting with the FDA on 8/11/72, which</p> <p>21 is eight days after the Lewin report is sent to FDA,</p> <p>22 right?</p> <p>23 A. Yes, it's eight days, yes.</p> <p>24 Q. J&J has notice of it pretty quick,</p> <p>25 don't they?</p>

<p style="text-align: right;">Page 22</p> <p>1 A. Well, obviously, yes.</p> <p>2 Q. Okay. So his summary says, "The</p> <p>3 CTFA, FDA and Johnson & Johnson meeting can be</p> <p>4 summarized as follows." And they have a lot of</p> <p>5 stuff. They provided their own data on Shower to</p> <p>6 Shower that they say it is free of chrysotile,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. They say that Dr. Lewin didn't agree</p> <p>10 with McCrone's interpretation of the X-ray data;</p> <p>11 however, he could not satisfactorily explain the</p> <p>12 absence of chrysotile asbestos in the electro</p> <p>13 microscopy grids. He said it may be asbestos</p> <p>14 growing inside the plates on top.</p> <p>15 They summarize a lot of stuff here,</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. What they say here is, "On the basis</p> <p>19 of our data, CTFA was able to say that the Lewin</p> <p>20 report is incomplete since it relied only on X-ray</p> <p>21 assay, which must be confirmed by microscopy."</p> <p>22 So what they're saying is, if you're</p> <p>23 going to do X-ray you have to confirm it by optical</p> <p>24 microscopy, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 24</p> <p>1 products?</p> <p>2 A. He claimed he saw -- he observed</p> <p>3 chrysotile. He claimed that, yes.</p> <p>4 Q. Right. And Ian Stewart from McCrone</p> <p>5 said that light microscopy may not detect</p> <p>6 chrysotile, correct?</p> <p>7 A. He stated what he stated.</p> <p>8 Q. Right.</p> <p>9 A. He didn't specify whether it's</p> <p>10 optical light or polarized light. He just uses the</p> <p>11 word light microscopy.</p> <p>12 Q. I didn't ask you what type of light</p> <p>13 microscopy.</p> <p>14 He said light microscopy may not</p> <p>15 detect chrysotile fibers, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And look at what Dr. Weissler for the</p> <p>18 FDA, what he says. "Dr. Weissler said that they</p> <p>19 recognized that some samples will be passed on that</p> <p>20 basis but they are willing to live with that,"</p> <p>21 right?</p> <p>22 A. Well, what is written is what Dr.</p> <p>23 Weissler stated back in 1972.</p> <p>24 Q. Meaning, that they accept that some</p> <p>25 chrysotile will not be seen, correct?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Now, let's skip ahead. In 1976</p> <p>2 Johnson & Johnson and the CTFA adopt J4-1, correct,</p> <p>3 which is the industry analytical standard for talc</p> <p>4 and asbestos, right?</p> <p>5 A. It is, yes.</p> <p>6 Q. Okay. That method is XRD and then</p> <p>7 only if there's a positive do you go to optimal</p> <p>8 microscopy, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Yet here in 1972, Johnson &</p> <p>11 Johnson is saying that X-ray assay must be confirmed</p> <p>12 by microscopy, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. "Dr. Schaffner asked Dr. Lewin</p> <p>15 to tell the group what work he proposes to confirm</p> <p>16 his X-ray findings. After some discussion Dr. Lewin</p> <p>17 said that to be able to say that a sample contains</p> <p>18 asbestos, the X-ray results have to be confirmed by</p> <p>19 a light microscopy. If no asbestos tremolite or</p> <p>20 chrysotile is seen, the sample is declared free of</p> <p>21 asbestos. In subsequent discussion, Mr. Ian Stewart</p> <p>22 pointed out that light microscopy may not detect</p> <p>23 chrysotile fibers."</p> <p>24 Now what was the chief type of fiber</p> <p>25 that Dr. Lewin had said was in the Johnson & Johnson</p>	<p style="text-align: right;">Page 25</p> <p>1 A. What Dr. Weissler and FDA stated is</p> <p>2 what he stated.</p> <p>3 Q. Okay. And so he then says, "Dr.</p> <p>4 Schaffner" -- who is at the FDA, is he not?</p> <p>5 A. Yes, he was.</p> <p>6 Q. (Continuing.) "Said that this</p> <p>7 procedure will be adopted in the proposed policy</p> <p>8 statement. He asked if anyone present had any</p> <p>9 toxicological objections to the allowance of</p> <p>10 1 percent weight for weight asbestos and talc. No</p> <p>11 objections were raised"; is that correct?</p> <p>12 A. At that particular meeting, that is</p> <p>13 what is written.</p> <p>14 Q. Johnson & Johnson was at this</p> <p>15 meeting, right?</p> <p>16 A. Yes. I believe they were.</p> <p>17 Q. Right. This is Johnson & Johnson's</p> <p>18 memo of the meeting, correct?</p> <p>19 A. There was a lot of people there. But</p> <p>20 I believe they were there, yes.</p> <p>21 Q. Okay. Well, let's just -- just so we</p> <p>22 are clear, right, CTFA, FDA and Johnson & Johnson</p> <p>23 meeting, right?</p> <p>24 A. Yes.</p> <p>25 Q. They wouldn't call it a Johnson &</p>

<p style="text-align: right;">Page 26</p> <p>1 Johnson meeting if they weren't there?</p> <p>2 A. No, it was a CTFA and a Food and Drug</p> <p>3 Administration meeting.</p> <p>4 Q. You told us yesterday that Johnson &</p> <p>5 Johnson's stated policy is zero tolerance for</p> <p>6 asbestos, correct?</p> <p>7 A. That is the policy, yes.</p> <p>8 Q. Here, Schaffner for the FDA says</p> <p>9 that -- "he asked if anyone present had any</p> <p>10 toxicological objections to the allowance of</p> <p>11 1 percent asbestos in talc. No objections were</p> <p>12 raised," correct?</p> <p>13 A. Well, that's what Dr. Schaffer --</p> <p>14 Schaffner wrote.</p> <p>15 Q. Are you saying that Johnson & Johnson</p> <p>16 did object, but it wasn't recorded?</p> <p>17 A. I don't know. I wasn't there in</p> <p>18 1972.</p> <p>19 Q. If Johnson & Johnson has a zero</p> <p>20 tolerance policy for asbestos, why would they not</p> <p>21 object when the FDA said, we're going to allow</p> <p>22 1 percent asbestos in talc?</p> <p>23 A. I can't answer that. All I can say</p> <p>24 is they had and still have a zero tolerance policy.</p> <p>25 Q. But the reality is outside of what</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Alright. This one is also by</p> <p>3 Dr. Nashed, right?</p> <p>4 A. Yes.</p> <p>5 Q. August 14th, 1972, correct?</p> <p>6 A. Correct.</p> <p>7 MR. PANATIER: This is Exhibit 2423,</p> <p>8 your Honor. We offer it into evidence.</p> <p>9 MS. SULLIVAN: No objection.</p> <p>10 THE COURT: Admitted.</p> <p>11 (Plaintiff's Exhibit 2423 was moved</p> <p>12 into evidence.)</p> <p>13 BY MR. PANATIER:</p> <p>14 Q. This is Dr. Nashed writing a memo to</p> <p>15 file. We've seen one of these before, right?</p> <p>16 A. We have, yes.</p> <p>17 Q. Okay. This is more of a sort of</p> <p>18 summary of what individual people said, correct?</p> <p>19 A. It appears to be, yes. It's their</p> <p>20 comments at a particular meeting, Food and Drug</p> <p>21 Administration, yes.</p> <p>22 Q. Now, Mr. Merritt was head of the</p> <p>23 CTFA, correct?</p> <p>24 A. I don't know. I don't know at that</p> <p>25 time. He was certainly part of CTFA.</p>
<p style="text-align: right;">Page 27</p> <p>1 they say, they really didn't because we have the</p> <p>2 evidence right here. The FDA has said 1 percent</p> <p>3 will be allowed and no objections were raised; isn't</p> <p>4 that true?</p> <p>5 MS. SULLIVAN: Objection, lawyer</p> <p>6 argument, your Honor.</p> <p>7 THE COURT: Overruled.</p> <p>8 You can answer.</p> <p>9 THE WITNESS: The document states</p> <p>10 what Dr. Schaffner FDA stated, period.</p> <p>11 BY MR. PANATIER:</p> <p>12 Q. And what Johnson & Johnson didn't</p> <p>13 state, an objection, right?</p> <p>14 A. Well, it said no objections were</p> <p>15 raised.</p> <p>16 Q. Let's go down here. "We obtained an</p> <p>17 agreement with Dr. Schaffner and Lewin to allow Ian</p> <p>18 Stewart to interact with Dr. Lewin to resolve the</p> <p>19 differences on Shower to Shower findings."</p> <p>20 Now, Ian Stewart was a consultant to</p> <p>21 Johnson & Johnson, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So that's the first memo from</p> <p>24 that day by Dr. Nashed. If you'll look at the next</p> <p>25 one also dated the same date. Have you found it?</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Okay. Let's see what Merritt says.</p> <p>2 "It is unfair to select samples at random and</p> <p>3 release information by brand name. This is not an</p> <p>4 industry survey but an industry sampling. If the</p> <p>5 results are in error, the FDA will have to apologize</p> <p>6 later. Also the release of information will cause</p> <p>7 economic hardships."</p> <p>8 Now, it would only cause an economic</p> <p>9 hardship if the information showed that there was</p> <p>10 asbestos in the product, right; if it said it was</p> <p>11 asbestos free, there would be no economic hardship,</p> <p>12 right?</p> <p>13 A. Well, if the information was</p> <p>14 factually correct, right.</p> <p>15 Q. Okay. He suggested that if the FDA</p> <p>16 releases anything it should be by code number. So</p> <p>17 not by brand name, right?</p> <p>18 A. Well, he's written what he's written.</p> <p>19 Q. Okay. Schaffner says, "Our lawyers</p> <p>20 say we have to release the actual names," right?</p> <p>21 A. Again, you're reading what he wrote.</p> <p>22 Q. Okay. Merritt says, "This is not</p> <p>23 legally the case. We reserve the right to legal</p> <p>24 action by the CTFA."</p> <p>25 So they're threatening legal action</p>

<p style="text-align: right;">Page 30</p> <p>1 against the FDA, correct?</p> <p>2 A. Well, they have an opinion and Dr.</p> <p>3 Schaffner had an opinion.</p> <p>4 Q. Okay. Alright. So let's see what</p> <p>5 they say about Dr. Lewin. Dr. Lewin in responding</p> <p>6 to Johnson & Johnson says, "Knowing Johnson &</p> <p>7 Johnson, I repeated my work on Shower to Shower last</p> <p>8 night using stefs scanning. I find that my initial</p> <p>9 result is confirmed," right?</p> <p>10 A. That's what he stated.</p> <p>11 Q. Now, on the Shower to Shower, he</p> <p>12 reported finding asbestos, correct?</p> <p>13 A. He claimed to have found -- he</p> <p>14 claimed to have found chrysotile.</p> <p>15 Q. And he said, "I know these guys, so I</p> <p>16 repeated my work last night. I verified it," right?</p> <p>17 A. Well, that's what he wrote.</p> <p>18 Q. Dr. Nashed from J&J says, "We didn't</p> <p>19 find any asbestos in Shower to Shower," right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Interestingly, Dr. Schaffner</p> <p>22 says at one point, "I understand that talc can be</p> <p>23 purified to remove asbestos, looking at Nashed."</p> <p>24 And then someone said -- from Whitaker Clark &</p> <p>25 Daniel says, "This cannot be done. The mine must be</p>	<p style="text-align: right;">Page 32</p> <p>1 A. That's what he states -- stated.</p> <p>2 Q. And here he -- that's verified, "The</p> <p>3 light microscopy is not capable of detecting fine</p> <p>4 chrysotile fibers," correct?</p> <p>5 A. That's what he stated.</p> <p>6 Q. Right. Dr. Weissler, "I understand</p> <p>7 that some samples will be passed even though they</p> <p>8 contain such fibers but we are willing to live with</p> <p>9 it," right?</p> <p>10 A. Again, you're reading what he stated.</p> <p>11 Q. Dr. Schaffner from the FDA, "The</p> <p>12 policy will depend on X-ray, which is sensitive to</p> <p>13 more than 1 percent asbestos."</p> <p>14 So X-ray, right, that's XRD, correct?</p> <p>15 A. It is, yes.</p> <p>16 Q. Here they're saying it's sensitive</p> <p>17 only to 1 percent, right?</p> <p>18 A. At the time it was.</p> <p>19 Q. Meaning, if there's asbestos present</p> <p>20 less than 1 percent, it's not going to be seen,</p> <p>21 right?</p> <p>22 A. At that time, that was the case by</p> <p>23 X-ray diffraction.</p> <p>24 Q. Again, does anybody object from a</p> <p>25 toxicological point of view, no objections, right?</p>
<p style="text-align: right;">Page 31</p> <p>1 substantially free of asbestos." And Johnson &</p> <p>2 Johnson agrees with that, correct?</p> <p>3 A. Absolutely, yes.</p> <p>4 Q. Right. If there is asbestos present,</p> <p>5 there's not a process that can remove it all from</p> <p>6 the talc, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And then Avon says, "We don't</p> <p>9 know if our supply has less than 1 percent of</p> <p>10 asbestos. But this isn't an Avon case."</p> <p>11 Schaffner, "No, I think all samples</p> <p>12 must be confirmed. Lewin finally suggested that the</p> <p>13 samples be examined by light microscopy and if the</p> <p>14 asbestos is not seen, the sample will be declared no</p> <p>15 detectable asbestos."</p> <p>16 Right, that's that "ND" we've seen, correct?</p> <p>17 A. Yes, looking at it by light, yes.</p> <p>18 Q. Notwithstanding the X-ray finding,</p> <p>19 Dr. Stewart -- now, in the previous memo, Dr. Nashed</p> <p>20 says that Dr. Stewart says something about light</p> <p>21 microscopy, correct?</p> <p>22 A. He used the word "light microscopy."</p> <p>23 Q. Right. Dr. Stewart said or Ian</p> <p>24 Stewart said, "Light microscopy may not detect</p> <p>25 chrysotile fibers," correct?</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Well, I wasn't at that meeting.</p> <p>2 Q. The people who were say nobody</p> <p>3 objected to that?</p> <p>4 A. Well, that's what's stated in that</p> <p>5 report.</p> <p>6 Q. Okay. And so industry said, Lewin</p> <p>7 you've got to verify your results, right?</p> <p>8 A. Are you reading from...</p> <p>9 Q. We just went over it on the previous</p> <p>10 document right here. "On the basis of our data,</p> <p>11 CTFA" -- of which Johnson & Johnson was a member,</p> <p>12 correct, sir?</p> <p>13 A. Yes.</p> <p>14 Q. (Continuing.) "Was able to say that</p> <p>15 the Lewin report is incomplete since it relied on</p> <p>16 X-ray only. It has to be confirmed by microscopy,"</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. They insisted upon that, correct?</p> <p>20 A. That's what was written.</p> <p>21 Q. Right. At the same time they know</p> <p>22 that the light microscopy is not capable of</p> <p>23 detecting the chrysotile, right? Correct, sir?</p> <p>24 A. On the previous -- yeah, that's what</p> <p>25 is stated. But on the previous one it uses the word</p>

<p style="text-align: right;">Page 34</p> <p>1 "microscopy." Certainly, by 1972 Johnson & Johnson 2 were using transmission electron microscopy. 3 MR. PANATIER: I'm going to object as 4 nonresponsive. 5 THE COURT: Doctor, could you please 6 just answer the question being asked. 7 THE WITNESS: Yes. 8 THE COURT: Thank you. 9 BY MR. PANATIER: 10 Q. What they used here was not 11 transmission electron microscopy at all, correct? 12 A. Let's go back again. 13 Q. Sir, let me just ask you a question. 14 You said yesterday that you had reviewed all 15 of the relevant documents in the case, correct? 16 A. Yes. 17 Q. I've shown you these documents 18 before, haven't I? 19 A. You have, yes. 20 Q. In person, at your deposition? 21 A. Yes. 22 Q. You know that they're not talking 23 about transmission electron microscopy here, 24 correct? 25 A. Ian Stewart was not talking about</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Okay. 2 A. He didn't have... 3 Q. Again, you have two documents here 4 where Johnson & Johnson is given an opportunity to 5 object to something that is only sensitive to 1 6 percent, right, XRD? 7 A. Yes. 8 Q. Right? 9 A. Yes. 10 Q. And they are given an opportunity to 11 object to using light microscopy but they all accept 12 it, don't they? 13 A. On that part of the phraseology, I, 14 you know, I don't know whether you are going to go 15 on to Page 3 of the... 16 Q. Which one? What do you want to look 17 at? 18 A. Well, it's part of this whole 19 documentation of what was said and what they did, on 20 Page 3, which is top of Page 358. He does talk -- 21 and that's what I was trying to say -- "I suggested 22 he look at a sample by EM." 23 Q. Where are you? 24 A. It's Bates No. ending 3555. 25 Q. I have that. Where are you?</p>
<p style="text-align: right;">Page 35</p> <p>1 transmission electron microscopy, no. 2 Q. What the industry said was, Lewin you 3 have to follow up with light microscopy, correct? 4 A. Would you put that back on the screen 5 so -- 6 Q. I will put it up again, sure. 7 A. I don't want to give a false 8 statement. 9 Q. "Confirmed by microscopy," correct? 10 A. Yeah, that was the point I was trying 11 to make. It said it must be confirmed by 12 microscopy. 13 Q. Yes. And in the discussion they're 14 clearly talking about Lewin doing light microscopy. 15 "In subsequent discussion Ian Stewart pointed out 16 light microscopy may not detect chrysotile fibers. 17 Weissler said they recognize some samples will be 18 passed on that basis but willing to live with it," 19 correct? 20 A. Yes. 21 Q. Okay. We know that Lewin concludes 22 by saying, "I'll do light microscopy. If I don't 23 see it, I'll say non-detect," correct? 24 A. I believe that was what he stated, 25 yes.</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Okay. The penultimate paragraph on 2 the bottom said, "During lunch I discussed with Dr. 3 Lewin" -- and then he goes on to say -- "I suggested 4 he look at our sample by EM." 5 Q. Right. 6 A. And I believe -- that's what I was 7 just trying to say, that they weren't just talking 8 about optical in the discussion. 9 Q. Dr. Nashed invited Dr. Lewin to look 10 at a sample, a sample by EM, not all of his testing. 11 You understand that this entire thing 12 was about all -- confirming, as they say, all of the 13 testing he had done, correct? 14 A. Yes. 15 Q. And it was set to be confirmed, as 16 they put it, by optical microscopy, you understand 17 that, right? 18 A. At that part of the meeting, yes. 19 Q. Dr. Lewin never confirmed his results 20 by EM, correct? 21 A. No -- 22 Q. Okay. 23 A. -- but I was just trying to explain 24 that they did talk about it at that meeting. 25 Q. They talked about all sorts of things</p>

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1 at the meeting. But that's what Dr. Lewin was asked
2 to do, was it?
3 MS. SULLIVAN: Objection, your Honor,
4 lawyer argument.
5 THE COURT: Overruled.
6 You can answer it.
7 BY MR. PANATIER:
8 Q. Correct, sir?
9 A. Lewin was asked to look at it by
10 light microscopy.
11 Q. Right. And so, when he comes back in
12 1973 and a bunch of his chrysotile results become
13 question marks or non-detects, right, we have a
14 reasonable explanation as to why, because Ian
15 Stewart from McCrone told us the light microscopy
16 will not resolve the fine chrysotile fibers,
17 correct?
18 A. Again, I'm not -- I mean, you are
19 stating what was stated, correct.
20 Q. Right.
21 A. But I'm not a microscopist, so I
22 don't want to speculate.
23 Q. Ian Stewart was, though?
24 A. Ian Stewart was, yes.
25 Q. Alright. You can set that aside.

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1 And then Dr. Lewin was -- he wrote a
2 letter to the editor where he said -- he said --
3 you're familiar with this, right?
4 A. Yes.
5 Q. Right. It's marked 1973. I think
6 this is already in evidence from last week. It's a
7 Defense exhibit. I'll just put it up.
8 Right, we saw this last week where he
9 says, "In the article referred to, I was erroneously
10 quoted as having reported that Johnson & Johnson
11 talcum powder contained 2 to 3 percent asbestos. In
12 actual fact, I reported that 11 of the samples of
13 the products of this company I found no asbestos in
14 nine of the samples and the other two samples fell
15 into the inconclusive category described above.
16 These results are not seriously at variance with
17 those reported by investigators retained by the
18 company."
19 So we're talking about McCrone, Colorado
20 School of Mines, Brown, all those guys, right?
21 A. Yeah, Berger.
22 Q. Berger?
23 A. Professor Pooley.
24 Q. Yes, okay.
25 A. Yeah.

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1 Q. Okay, yeah.
2 So, to summarize, Lewin does XRD, XRD
3 is only sensitive, according to this report, down to
4 1 percent, correct?
5 A. According to that report.
6 Q. He does get a good number of
7 positives for asbestos, correct?
8 A. He gets positives for amphibole by
9 XRD.
10 Q. Right, right. Then he reports in
11 '72?
12 A. He reports in this -- yes,
13 amphiboles.
14 Q. Eight days later they're meeting with
15 the FDA and they get the FDA to say, you've got to
16 confirm these but you have to do it by a different
17 method optical microscopy, correct?
18 A. Yes.
19 Q. And Johnson & Johnson's own
20 consultant at the meeting says, it's not going to
21 see fine chrysotile, correct?
22 A. Well, that's what he stated at that
23 time.
24 Q. And then the results go to non-detect
25 in the last report, correct?

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1 A. Well, that's what Dr. Lewin --
2 Professor Lewin reported.
3 Q. Now, he also said in that meeting,
4 eight days after the initial report that he had
5 confirmed the Shower to Shower report the night
6 before, right?
7 A. That's what he stated.
8 Q. Shower to Shower was sample 84,
9 right?
10 A. Yes.
11 MR. PANATIER: Okay. Okay. Let's
12 look at -- this will be 3695-26. This is a FDA FOIA
13 document, your Honor.
14 THE COURT: Thank you.
15
16 Q. Dr. Hopkins, this here --
17 MR. PANATIER: Your Honor, we'll
18 offer this into evidence. It's a memo of a meeting
19 August 11, 1972. It's the FDA FOIA response.
20 MS. SULLIVAN: No objection.
21 THE COURT: Admitted.
22 (Plaintiff's Exhibit 3695-26 was
23 moved into evidence.)
24 BY MR. PANATIER:
25 Q. This is the FDA's own memo of their

<p style="text-align: right;">Page 42</p> <p>1 meeting, right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And you can see that Nashed,</p> <p>4 Rolle, Hammer, Goudie and Stewart are all listed as</p> <p>5 being there for Johnson & Johnson, right?</p> <p>6 A. Yes.</p> <p>7 Q. They have more people there than any</p> <p>8 other company, right?</p> <p>9 A. There are representatives from many</p> <p>10 other companies, yes.</p> <p>11 Q. But they have more people for their</p> <p>12 company than any others did for theirs, right?</p> <p>13 A. Yes, they have a few more, yes.</p> <p>14 Q. I just wanted to see if you agreed</p> <p>15 with this statement. "There was no disagreement</p> <p>16 between FDA industry scientists present at this</p> <p>17 meeting about the potential safety hazard that the</p> <p>18 presence of asbestos in talc containing cosmetic</p> <p>19 product poses to the consumer."</p> <p>20 Johnson & Johnson still agrees today</p> <p>21 that that would pose a danger to the consumer,</p> <p>22 correct, if there was asbestos in consumer talc?</p> <p>23 A. Yes.</p> <p>24 Q. Alright. So let's go to October 27,</p> <p>25 1972. And you probably have four tabs with that</p>	<p style="text-align: right;">Page 44</p> <p>1 starting with 2416?</p> <p>2 MR. PANATIER: 2415, your Honor.</p> <p>3 THE COURT: 15, thank you.</p> <p>4 MR. PANATIER: Yes.</p> <p>5 BY MR. PANATIER:</p> <p>6 Q. And inside he makes very clear what</p> <p>7 they're looking at. He says that, both samples, at</p> <p>8 least, by their characterization contained an</p> <p>9 insignificant amount of tremolite, less than</p> <p>10 5 percent, right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And we know that these were</p> <p>13 samples 108 and 109T, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And McCrone -- now, we've heard a lot</p> <p>16 about McCrone. I think you have said they're</p> <p>17 world-renowned. They were head of the game. They</p> <p>18 knew what they were doing with microscopy, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And they say here, the total</p> <p>21 tremolite content of the two samples would be,</p> <p>22 approximately, .5 percent for 108T and about .2 to</p> <p>23 .3 percent for 109T, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And they say in their conclusion, "A</p>
<p style="text-align: right;">Page 43</p> <p>1 date. And they're all related.</p> <p>2 (There is a discussion off the</p> <p>3 record.)</p> <p>4 MR. PANATIER: Alright. So these</p> <p>5 will be Exhibits 2415, 2416, which are both in --</p> <p>6 I'm sorry -- yeah, 2416, 2415 is already in</p> <p>7 evidence. 2419 is already in evidence and then</p> <p>8 2417. So 2416 and 2417 we'll offer into evidence.</p> <p>9 MS. SULLIVAN: No objection.</p> <p>10 THE COURT: So admitted.</p> <p>11 (Plaintiff's Exhibit 2416 was moved</p> <p>12 into evidence.)</p> <p>13 (Plaintiff's Exhibit 2417 was moved</p> <p>14 into evidence.)</p> <p>15 BY MR. PANATIER:</p> <p>16 Q. Now, Dr. Hopkins, if you'll turn to</p> <p>17 -- yeah. Yeah, that's a good place to start.</p> <p>18 That is dated October 27, 1972,</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. And this is McCrone's analysis of</p> <p>22 Lewin's Johnson's Baby Powder, correct?</p> <p>23 A. It is, yes.</p> <p>24 Q. Okay.</p> <p>25 THE COURT: For the record, you're</p>	<p style="text-align: right;">Page 45</p> <p>1 detailed examination of two samples of Johnson &</p> <p>2 Johnson's Baby Powder 108T and 109T has shown this</p> <p>3 material to be substantially free of asbestiform</p> <p>4 minerals."</p> <p>5 Now, "substantially free" doesn't mean all</p> <p>6 free, does it?</p> <p>7 A. No. You're reading what is written.</p> <p>8 I'm not going to speculate on what they meant by</p> <p>9 "substantially free."</p> <p>10 Q. Well, if it was free, they would say</p> <p>11 "free," wouldn't they?</p> <p>12 A. They may do.</p> <p>13 Q. Right.</p> <p>14 A. They may do.</p> <p>15 Q. And, in fact, the very next line they</p> <p>16 say, a few tremolite rods were observed in both</p> <p>17 samples at a level less than .5 percent, right?</p> <p>18 A. Tremolite rods.</p> <p>19 Q. Right?</p> <p>20 A. Yes.</p> <p>21 Q. They say, "substantially free of</p> <p>22 asbestiform minerals" and then they describe what</p> <p>23 they found in the very next sentence.</p> <p>24 A. As tremolite rods.</p> <p>25 Q. Are you saying that that's different</p>

<p style="text-align: right;">Page 46</p> <p>1 than asbestiform minerals that they say in the 2 sentence right before that, sir? 3 A. No, tremolite rods are not 4 asbestiform. 5 Q. Where do you get -- are you a trained 6 geologist? 7 A. I've read so much of those, thousands 8 of documents, that's where I've gained that 9 information. 10 Q. Let's just see here. 11 So I want you to tell me -- 12 MR. PANATIER: You know what, your 13 Honor, permission for the witness to step down to 14 the chart. 15 THE COURT: Sure. 16 BY MR. PANATIER: 17 Q. And choosing any color you like, sir, 18 can you draw what you believe a rod looks like. 19 Show us a rod. 20 A. It looks like my pen. 21 Q. Okay. So go ahead and draw it since 22 you're down here. 23 A. (The witness complies.) 24 Q. Okay. Thank you. 25 A. That's it.</p>	<p style="text-align: right;">Page 48</p> <p>1 There's my drawing of a fiber. 2 Now what's the difference between my 3 fiber and your rod? 4 A. This is where we get into the 5 expertise that are required from a microscopist to 6 explain the difference between a fibrous form of -- 7 for asbestos or the non-fibrous form of tremolite or 8 those materials. 9 Q. What we have here from McCrone is 10 McCrone says it's "substantially free," which means 11 it's not free of asbestiform minerals, correct? 12 A. What is written is what is written. 13 It says, "substantially free of asbestiform 14 minerals." 15 Q. If I draw a circle and I -- say it's 16 substantially colored in, it means it's not all the 17 way colored in, correct? 18 A. You know, I'm not going to speculate 19 on what McCrone wrote long ago. 20 Q. Hold on. I'm just talking about my 21 circle right now. 22 A. Okay. You can talk about your 23 circle. 24 Q. Okay. So, if -- because we're just 25 trying to get your understanding straight, sir.</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. That's very good. That's very good. 2 Did you go to art school? 3 And we're going to put -- I'll put 4 "rod" here; is that okay? 5 A. Yes. 6 Q. Okay. Okay. I'm sorry I got you 7 down here to just draw one line. But now we know 8 what we're talking about. 9 A. That's okay. Now we know what we are 10 talking about. Like I said, it looks like my pen. 11 Q. Now, we know it was tremolite, right? 12 A. Yes. 13 Q. And we know that Johnson & Johnson's 14 definition of a fiber is something that is 3-to-1 or 15 longer, correct? 16 A. A fiber? 17 Q. That's correct. 18 A. Yes, yes. 19 Q. What you drew is certainly 3-to-1 or 20 longer. It's about probably a hundred-to-1, isn't 21 it? 22 A. That particular drawing is a rod, 23 which is not microscopically described as fibrous or 24 fibrous. 25 Q. I'm going to draw a fiber; there.</p>	<p style="text-align: right;">Page 49</p> <p>1 So, if I substantially color in the 2 circle, I haven't colored in the entire circle, have 3 I? 4 A. No. But you're talking about 5 circles. 6 Q. Can we agree that it's substantially 7 colored in? 8 A. Again, it's -- you're playing word 9 games. It is substantially colored in, not entirely 10 colored in. 11 Q. I don't think I'm the one playing 12 "word games," sir. 13 A. It's not entirely colored in. 14 MS. SULLIVAN: Lawyer argument. 15 Q. Can you just answer my question? 16 THE COURT: Excuse me. Not more than 17 one person at one time please, for the record. 18 The question, please. 19 BY MR. PANATIER: 20 Q. The question is, sir, with regard to 21 the circle, so we can try to get our bearings and be 22 on the same ground, would you agree that it's 23 substantially colored in? 24 A. If you are describing the circle, 25 yes.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. Okay. Which means that part of it, 2 this little part down here, is not colored in, 3 right? 4 A. The circle is not fully colored in. 5 Q. What "substantially" means, is that 6 most of, but not all. Can we agree with that 7 working definition of "substantial"? 8 A. In relation to the circle, yes. 9 Q. Okay. Now, let's take that same 10 definition and let's apply it to what McCrone said. 11 They said "substantially free," which means most but 12 not all. Can we agree that that's what that means? 13 A. Again, I'm not going to speculate 14 what Ian Stewart wrote in 1970, whatever it was, as 15 to what he meant. 16 Q. I -- 17 A. He wrote what he's spoken, "not 18 substantially free." 19 Q. I'm sorry, sir. 20 I'm asking you whether or not we can 21 just apply plain English to the word 22 "substantially." Can we do that together? 23 MS. SULLIVAN: Objection, your Honor. 24 It's lawyer argument. 25 THE COURT: Overruled.</p>	<p style="text-align: right;">Page 52</p> <p>1 report, right? 2 A. Yes. 3 Q. And this is now in evidence. You can 4 see this is 2416. 5 This says "McCrone study being 6 redone," right? 7 A. Yes. 8 Q. If you turn to the other side of it, 9 it says, October 27, 1972. "Here is our report on 10 the baby samples. I hope to have the Shower to 11 Shower report out to you soon. But something always 12 seems to break lose when I sit down to write it." 13 Okay. 14 Someone there at J&J says, it's being 15 redone, right? 16 A. Yes. 17 Q. And then there's addition, I guess, 18 once it comes in. It says, new one is in the Master 19 talc file, right? 20 A. Yes. 21 Q. Where was the old one put? 22 A. Well, the old one we just looked at. 23 Q. Yeah, right. It's present in the 24 courtroom right now. But did they not put it in the 25 Master talc file?</p>
<p style="text-align: right;">Page 51</p> <p>1 You can answer. 2 A. We can apply "substantially free" and 3 that is what McCrone wrote. 4 Q. It doesn't say all free or asbestos 5 free, does it? 6 A. What it says is what it says, 7 "substantially free." 8 Q. And if we -- we know that according 9 to Johnson & Johnson's own definition of fiber, it 10 is a particle of one of the six regulated minerals, 11 right? 12 A. Yes. 13 Q. That is greater than or equal to 14 3-to-1, right? And that's from JM -- I'm sorry, TM. 15 And that has a J. TM7024, right? 16 A. On that particular definition, right. 17 Q. That's their TEM definition for 18 asbestiform fibers, right? 19 A. On their particular four-line 20 definition, yes. 21 Q. Now, we know that this report was 22 changed, correct? 23 A. It was revised when it was 24 re-evaluated, yes. 25 Q. Because it says, do not use this</p>	<p style="text-align: right;">Page 53</p> <p>1 A. I don't see why they wouldn't. 2 Q. This was not sent to the FDA, 3 correct? 4 THE COURT: For the record, when you 5 say, "this was not sent to the FDA"? 6 MR. PANATIER: Thank you, your Honor. 7 BY MR. PANATIER: 8 Q. Exhibit 2415. The one that says, "do 9 not use this report," correct? 10 A. I don't know. 11 Q. Exhibit 2419 was sent to the FDA, 12 correct? 13 A. I believe so, yes. 14 Q. Okay. Now, let's look at -- this is 15 the revised report, correct? 16 A. Yes. 17 Q. Now -- 18 A. They repeat -- they did the study 19 again. 20 Q. Here now it says, "both samples 21 contain an insignificant amount of tremolite," 22 right? 23 A. Yes. 24 Q. In the first version it says, 25 "insignificant amount," and they give the</p>

<p style="text-align: right;">Page 54</p> <p>1 percentage, correct?</p> <p>2 A. On the first version they claimed a</p> <p>3 percentage, on the --</p> <p>4 Q. Now, they say --</p> <p>5 A. -- on the second version. They</p> <p>6 dropped the word "percentages" and simply stated --</p> <p>7 well...</p> <p>8 Q. A few isolated crystals?</p> <p>9 A. Oh, in the conclusion, they say</p> <p>10 almost exactly the same thing. Are we...</p> <p>11 Q. That's fine. I was looking at the</p> <p>12 front, but we can go to the conclusion. Here's the</p> <p>13 conclusion from the first version, right?</p> <p>14 A. Yes.</p> <p>15 Q. Observed in both samples of less than</p> <p>16 5 percent -- .5 percent, correct?</p> <p>17 A. Less than 0.5, yes.</p> <p>18 Q. And then they take that out in the</p> <p>19 second one and say, "a few tremolite rods were</p> <p>20 observed in both samples," correct?</p> <p>21 A. Yes. They say almost the same thing,</p> <p>22 substantially free of asbestiform minerals --</p> <p>23 MR. PANATIER: I'm going to object to</p> <p>24 nonresponsive.</p> <p>25 THE WITNESS: Yes, correct.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Okay. So this is McCrone. The best</p> <p>2 lab in the world, we've heard?</p> <p>3 A. They did the study twice.</p> <p>4 Q. Well, that's what they say they did,</p> <p>5 right?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay.</p> <p>8 A. They did it again.</p> <p>9 Q. If you do a study again, you have a</p> <p>10 new study, don't you?</p> <p>11 A. Yes.</p> <p>12 Q. But we don't have a new study here,</p> <p>13 do we?</p> <p>14 A. Well, they're two separate studies</p> <p>15 that came in on separate times.</p> <p>16 Q. Are they?</p> <p>17 A. Well, they're both separate.</p> <p>18 Q. Because it seems to me like there's</p> <p>19 two versions and the second one is backdated to the</p> <p>20 first, is it not?</p> <p>21 A. The second one they didn't change the</p> <p>22 front page date. But they're two separate reports.</p> <p>23 Q. They replaced the report. If it was</p> <p>24 two separate reports, right, you wouldn't say, don't</p> <p>25 use this report, you would have two separate</p>
<p style="text-align: right;">Page 55</p> <p>1 THE COURT: Overruled.</p> <p>2 THE WITNESS: Correct.</p> <p>3 BY MR. PANATIER:</p> <p>4 Q. Sir, look under "light microscopy."</p> <p>5 Do you see there under "light microscopy"? You can</p> <p>6 either look on the board, if you want, it might be</p> <p>7 easier.</p> <p>8 A. No, I can see it.</p> <p>9 Q. In the revised version they say --</p> <p>10 let's see -- "presence of tremolite and a few</p> <p>11 individual crystals were found, some rod shaped,"</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. In the original, they actually give</p> <p>15 the percentages in each product, correct?</p> <p>16 A. Yes. On the second version they did</p> <p>17 it again and weren't able to confirm the</p> <p>18 percentages. They still stated that they found</p> <p>19 tremolite rods.</p> <p>20 Q. And they even sent in a letter to J&J</p> <p>21 saying, "here's our revised thinking, we couldn't</p> <p>22 confirm our percentages," right?</p> <p>23 A. Yes, they checked again and they</p> <p>24 could still see tremolite rods but could not confirm</p> <p>25 percentages.</p>	<p style="text-align: right;">Page 57</p> <p>1 reports, correct, sir?</p> <p>2 A. Who is "they"? Who wrote, "do not</p> <p>3 use this report"?</p> <p>4 Q. Sir, Johnson & Johnson wrote "do not</p> <p>5 use this report." You know that.</p> <p>6 A. Well, I don't know that. But someone</p> <p>7 wrote it.</p> <p>8 What I'm saying is that, you asked</p> <p>9 the question, were there are two separate reports,</p> <p>10 yes.</p> <p>11 Q. But this isn't two separate reports.</p> <p>12 It's represented to be the same report.</p> <p>13 Are they both titled "Examination of Johnson</p> <p>14 & Johnson's Baby Powder"?</p> <p>15 A. They are.</p> <p>16 Q. Are they both dated 27 October '72?</p> <p>17 A. They are.</p> <p>18 Q. Okay. And they both are reporting on</p> <p>19 the exact same two samples, 108 and 109T, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And then one they're told, do not</p> <p>22 use, right?</p> <p>23 A. Yes. They did a second version, a</p> <p>24 second review, a second study, and issued a second</p> <p>25 report.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q. It's the same report, just backdated 2 to replace the first. In fact, that's what these 3 words say, is it not? 4 MS. SULLIVAN: Objection, your Honor, 5 lawyer argument. 6 THE COURT: Objection overruled. 7 You can answer. 8 A. Sorry. I missed the question there. 9 Q. It's the same report to be replaced 10 by the first. In fact, it even says replaced by 11 another version. It's not a -- this is not a second 12 report, is it? 13 A. It depends on how you define "second 14 report." There are two reports here, this one and 15 this one. 16 Q. You know the do not the use -- 17 A. Yes. 18 Q. -- stayed at Johnson & Johnson and 19 you know the second one to the FDA, right? 20 A. The second one went to the FDA based 21 on a second study. 22 Q. If you'll go to the next document 23 dated 10/27. That's it. That's it. You've got it. 24 A. Okay. 25 Q. That's Exhibit 2417. It's two-sided,</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And just because you said "trace," 2 going back to Battelle, we know that it appeared 3 anywhere from trace up to 3 percent, right? 4 A. On some of those early Battelle 5 studies. 6 Q. Right. We'll put that in the inbox. 7 Now, because we had that revised 8 report that was backdated -- and it was backdated, 9 was it not? 10 A. I don't know. They both carry the 11 same date. 12 Q. Right. Even though -- even though 13 the second version came later than October 27th, 14 correct? 15 A. I don't know when the second 16 version -- they both carry the same dates, but there 17 was -- they were -- the second report was a repeat 18 of the experiments. 19 Q. Johnson & Johnson actually took 20 liberty to revise reports of its consultants for 21 them, did it not? 22 A. Revise, I'm not aware of revising. 23 You'd need to show me what you're talking about. 24 Q. I will. This is Exhibit 2848. And, 25 sir, it is under the Tab 1976, June 2nd. It's</p>
<p style="text-align: right;">Page 59</p> <p>1 okay. On the one side it says, "revise report just 2 received," right? 3 A. Yes, uh-huh. 4 Q. And on the other side there's a note 5 from Nashed to Dr. Goudie, right? 6 A. Yes. 7 Q. And Nashed says, "I thought tremolite 8 was mistakenly identified in view of similarity to 9 sodium sesquihydrate," another chemical, correct? 10 A. Yes. 11 Q. And Al Goudie writes back, "There are 12 trace quantities present confirmed both by McCrone 13 and Bill Ashton." 14 Now, Bill Ashton was Johnson & Johnson, 15 right? 16 A. Yeah. 17 Q. "Levels are extremely low but 18 occasionally can be detected optically." This is 19 not new, right? 20 A. Yes. 21 Q. And you and I know the issue of 22 tremolite in the baby powder was not new; it was 23 quite old by this point, correct? 24 A. Yes. This could be trace tremolite, 25 yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 probably in the third binder is going to be my 2 guess. Let me help you. Yeah, it will be right 3 there. There it is right there. Got it? 4 A. (No response.) 5 Q. Okay. 6 THE COURT: What was the date on 7 that? 8 MR. PANATIER: June 2nd, 1976. 9 BY MR. PANATIER: 10 Q. Okay. Sir, if you could turn -- 11 there's some handwriting on the cover of that 12 document, right -- 13 A. Yes. 14 Q. -- on the first page? 15 And then there's a report on the second page 16 dated June 2nd, 1976. Do you see that? 17 A. Yes. 18 Q. Okay. And that is a letter from Gene 19 Greiger to Walter McCrone, correct -- or to, I'm 20 sorry, to Johnson & Johnson, correct? 21 A. Yes. Yeah. 22 MR. PANATIER: We offer this into 23 evidence, your Honor. 24 MS. SULLIVAN: No objection. 25 THE COURT: So admitted.</p>

<p style="text-align: right;">Page 62</p> <p>1 (Plaintiff's Exhibit 2848 was moved 2 into evidence.) 3 BY MR. PANATIER: 4 Q. So let's turn to the second page that 5 has -- 6 THE COURT: I'm sorry. And what's 7 the marking on this? 8 MR. PANATIER: Yes, your Honor, this 9 is 2848. 10 THE COURT: Thank you. 11 BY MR. PANATIER: 12 Q. So let's turn to the second page 13 which is the sample. And this is just a sample that 14 was run by McCrone. They sent their results to J&J, 15 right? 16 A. Yes. 17 Q. Okay. And they're looking at a talc 18 sample. I don't think they identify what the 19 samples are. 20 A. No. 21 Q. But you can see there's some detail 22 in the middle paragraph about those samples. They 23 found some talc ribbons. They said found one fiber 24 which was not asbestiform, probably talc and they 25 summarized their results, right?</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. They generated a report for Johnson & 2 Johnson. Somehow Bill Ashton finds out about it, 3 tells them to delete the second paragraph, correct? 4 A. Well, I'm not going to speculate 5 what -- any chain of events. 6 Q. Well, it says it right there, right? 7 A. This document says nothing more than 8 what it says. 9 Q. Don't you agree it's pretty clear, 10 note from Bill Ashton, "About 6-2-76 reports, delete 11 second paragraph, first and third okay"? That seems 12 pretty clear to me. 13 A. Yeah, whether that actually happened, 14 I don't know. 15 Q. I do. So let's go to the next 16 document. It's dated -- go to August 18, 1976. Let 17 me see. Actually, it may have the same date. It 18 may have the same date. Yes, it's this one right 19 here. Sorry. 20 This is dated August 18, 1976, 21 correct? 22 A. Yes. 23 Q. It's from Gene Grieger to Johnson & 24 Johnson to Bill Ashton? 25 MS. SULLIVAN: May I have a copy,</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yes. 2 Q. Okay. And then they -- on the next 3 pages they take photomicrographs, they take 4 pictures? 5 A. They do. 6 Q. Was McCrone an independent company? 7 A. Yes. 8 Q. Right. Could they be influenced by 9 Johnson & Johnson? 10 A. I don't believe so. 11 Q. There's some of the -- there's some 12 of the pictures they sent along. 13 Now, let's go to the cover, right? 14 You see the front page, "note from Bill Ashton"? 15 Now he's Johnson & Johnson, right? 16 A. Yes. 17 Q. Okay. I'll put our list of folks up 18 here. "About 6-2-76 reports, delete second 19 paragraph, first and third only," right? Right? 20 Signed "Gene," that's Gene Grieger, right? 21 A. Yes. 22 Q. And then there's a note that says, 23 "done," right? 24 A. That's what it says, here, yes, 25 handwritten.</p>	<p style="text-align: right;">Page 65</p> <p>1 Counsel? 2 MR. PANATIER: Oh, I'm so sorry. 3 Here it is. Yeah, here you go. That's yours. 4 Sorry. 5 BY MR. PANATIER: 6 Q. It's Exhibit 2849. Have you had a 7 chance to look at that? 8 A. Yes. 9 Q. Okay. And it has the Johnson & 10 Johnson Bates Stamp on it, correct? 11 A. Yes. 12 MR. PANATIER: We offer this into 13 evidence, your Honor. 14 MS. SULLIVAN: No objection, your 15 Honor. 16 THE COURT: Admitted. 17 (Plaintiff's Exhibit 2849 was moved 18 into evidence.) 19 BY MR. PANATIER: 20 Q. So here's the report. You see where 21 it says, "using TEM we examine 13 samples of talc 22 for asbestiform minerals submitted with your letter 23 dated 5, April '76"? 24 A. Yes. 25 Q. And this they were designated 1976 1</p>

<p style="text-align: right;">Page 66</p> <p>1 through 13 --</p> <p>2 A. Yes.</p> <p>3 Q. -- right?</p> <p>4 Now, let's go to the original report. Do</p> <p>5 you see the paragraph here? It's the identical</p> <p>6 first paragraph.</p> <p>7 A. Yes.</p> <p>8 Q. And then the middle paragraph is</p> <p>9 gone, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And the conclusions, the conclusions</p> <p>12 are...</p> <p>13 A. The same.</p> <p>14 Q. The same?</p> <p>15 A. Didn't find any asbestiform minerals.</p> <p>16 Q. Right. But per Johnson & Johnson's</p> <p>17 instruction, they deleted the entire middle part of</p> <p>18 their report, right?</p> <p>19 A. Well, both --</p> <p>20 Q. Sir, can you answer the question,</p> <p>21 please?</p> <p>22 A. Yes. I mean, the second version</p> <p>23 which came two months later is a condensed version,</p> <p>24 yes.</p> <p>25 Q. Sir, here's my question --</p>	<p style="text-align: right;">Page 68</p> <p>1 & Johnson to delete the second paragraph?</p> <p>2 A. Yeah, I don't know.</p> <p>3 Q. Because this one has the Johnson &</p> <p>4 Johnson Bates Stamp, right?</p> <p>5 A. Yes.</p> <p>6 Q. Either way, wherever I got it --</p> <p>7 MS. SULLIVAN: Your Honor, just for</p> <p>8 completeness, if Counsel can show the second page of</p> <p>9 the document with the Johnson & Johnson Bates Stamp</p> <p>10 on it.</p> <p>11 THE COURT: Counsel.</p> <p>12 MR. PANATIER: Sure.</p> <p>13 Second page of this one?</p> <p>14 MS. SULLIVAN: Right here.</p> <p>15 MR. PANATIER: That's not a Johnson &</p> <p>16 Johnson's Bates Stamp.</p> <p>17 BY MR. PANATIER:</p> <p>18 Q. That -- JOJOMA2546 is the McCrone</p> <p>19 Bates Stamp. But, anyway, you see the Bates Stamp</p> <p>20 and there's the J&J Bates Stamp?</p> <p>21 Bottom line is, wherever I got it --</p> <p>22 THE COURT: Excuse me.</p> <p>23 MR. PANATIER: I'm sorry.</p> <p>24 MS. SULLIVAN: Your Honor, I just --</p> <p>25 THE COURT: Counsel, let's have a</p>
<p style="text-align: right;">Page 67</p> <p>1 A. So the answer is, yes.</p> <p>2 Q. Yes. Johnson & Johnson told them to</p> <p>3 delete a paragraph and they did it and they reissued</p> <p>4 their report, right?</p> <p>5 A. Well, there are two reports.</p> <p>6 Q. And this is Bill Ashton, right, to</p> <p>7 Bill Ashton and it was Bill Ashton who called and</p> <p>8 said, "delete the second paragraph," right?</p> <p>9 A. Yes. He's, obviously, wanted a</p> <p>10 condensed version, a shortened version.</p> <p>11 Q. Maybe he was into speeding things up.</p> <p>12 But it resulted in a lot of information being taken</p> <p>13 out, correct?</p> <p>14 A. But both versions are here. There's</p> <p>15 nothing -- no one is hiding it.</p> <p>16 Q. No one is hiding it?</p> <p>17 A. No, both versions are here.</p> <p>18 Q. Did Johnson & Johnson give me this</p> <p>19 document, do you know?</p> <p>20 A. Where else? Yes.</p> <p>21 Q. Do you know if I had to go to McCrone</p> <p>22 to get it?</p> <p>23 A. I believe you got this from Johnson &</p> <p>24 Johnson.</p> <p>25 Q. You think I got this one from Johnson</p>	<p style="text-align: right;">Page 69</p> <p>1 discussion at sidebar.</p> <p>2 (Sidebar.)</p> <p>3 THE COURT: I have no issue with</p> <p>4 discussions at Counsel table, but they're little bit</p> <p>5 too loud and they're getting picked up. Okay.</p> <p>6 MS. SULLIVAN: I object to the</p> <p>7 misrepresentation. It says "JOJ" on it.</p> <p>8 THE COURT: Hold on, hold on. And</p> <p>9 what's your response?</p> <p>10 MR. PANATIER: My response is she's</p> <p>11 wrong. These are from McCrone. I can prove it.</p> <p>12 I've got affidavits. For her to say these are</p> <p>13 J&J's, well, she just doesn't know her documents.</p> <p>14 It's patently clear.</p> <p>15 THE COURT: Okay. Well, are you</p> <p>16 going to do that?</p> <p>17 MR. PANATIER: I can -- if there is</p> <p>18 an allegation or a reason to present to the Jury</p> <p>19 that this is from McCrone instead of J&J, I'm happy</p> <p>20 to do it. I'll do it right now.</p> <p>21 THE COURT: I think you should.</p> <p>22 MR. PANATIER: Okay. I will do it.</p> <p>23 THE COURT: Okay.</p> <p>24 (Sidebar ends.)</p> <p>25 BY MR. PANATIER:</p>

<p style="text-align: right;">Page 70</p> <p>1 Q. Just so we can be clear on where 2 these documents come from. You see that Bates Stamp 3 JOJOMA2546, right? 4 A. Yes. Yes. 5 Q. I'm just going to show the Court an 6 affidavit from McCrone. Do you see that, "My name 7 is David Wiley. I am of sound mind" -- 8 MS. SULLIVAN: Your Honor, I'm going 9 to object because I haven't been shown the 10 affidavit. I don't know what he's putting on the 11 screen. 12 MR. PANATIER: She just asked me to 13 do it. 14 MS. SULLIVAN: The practice is 15 usually to show it to -- 16 THE COURT: Show it to Counsel. 17 MS. SULLIVAN: No objection, your 18 Honor. 19 THE COURT: Continue. 20 BY MR. PANATIER: 21 Q. You see how this says, "I'm David 22 Wiley. I am one of the custodians of records from 23 McCrone & Associates." Do you see that? 24 A. Yes. 25 Q. It says that they were served with a</p>	<p style="text-align: right;">Page 72</p> <p>1 record.) 2 Q. In fact, 2546 on the document I 3 showed you, do you see that? 4 A. Yes. 5 Q. It's right here 2546? 6 A. Yes. 7 Q. And it say there's 1,561 pages in the 8 sequence, right? 9 A. Yes. 10 Q. And this is number 1,410, right? 11 A. Yes. 12 Q. This came from McCrone -- 13 A. Okay. 14 Q. -- right, not Johnson & Johnson? 15 A. Okay. 16 Q. But going back to my point which 17 wasn't about where it came from. 18 My point is even if this stayed in 19 Johnson & Johnson's files, right, the report that 20 was ultimately generated was missing the middle 21 paragraph per Johnson & Johnson's instructions; is 22 that right? Can we agree on that? 23 A. The report was ultimately generated, 24 did not include the middle paragraph. 25 Q. Alright. Do you know how many other</p>
<p style="text-align: right;">Page 71</p> <p>1 subpoena to produce documents. Do you see that? 2 A. Yes. 3 Q. These are kept, it says, in response 4 to the subpoena and we produced records to 5 Plaintiffs identified in the attached Exhibit 1. 6 These are kept by McCrone in the regular course of 7 business and so on and so on. Do you see that? 8 A. Yes. 9 Q. Signed April 23, 2018, right? 10 A. Yes. 11 Q. Okay. And attached to this affidavit 12 are a list of documents, right, from McCrone? You 13 see those Bates Stamps? 14 A. Yes. 15 Q. They have ones related to Cyprus, 16 Engelhard, Imerys, Johns Manville and Johnson & 17 Johnson, right? 18 A. Yes. 19 Q. And do you see here, the Johnson & 20 Johnson ones that McCrone produced are all with that 21 "JOJOMA" and then a number as you get down to the 22 possession of documents? 23 A. Yes. 24 Q. Okay. 25 (There is a discussion off the</p>	<p style="text-align: right;">Page 73</p> <p>1 reports generated by its consultants, these 2 apparently independent people that's been said, how 3 many more were altered by Johnson & Johnson? 4 A. None that I know of. 5 Q. Okay. Let's talk about FDA testing 6 of the Lewin samples, okay. This is already in 7 evidence. It's Exhibit 2617. 8 Thank you. 9 We discussed some of this last week 10 with Dr. Weber, okay. So the Jury has already seen 11 this. It's in evidence. 12 Sir, you and I have been over -- if 13 you'll take a look at the board -- you and I have 14 been over this document before. 15 This is the FDA testing of the Lewin 16 samples, correct? 17 A. Yes. 18 Q. Okay. And we're going to talk about 19 sample 84. The FDA found tremolite asbestos in 20 sample 84, correct? 21 A. Well, do we have the document in here 22 I can look at? 23 Q. Yeah, of course. So it will be dated 24 -- it should be dated 1973. Because it covers a 25 range of dates, so we just put the year. And if I</p>

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1 can -- do you mind if I help you find it, because I
2 know what it looks like.
3 A. Yeah. It's in the binder.
4 Q. Okay. It probably is, yeah. Here it
5 is. There you go.
6 So, sir, if you will turn please to
7 the page at the top marked 670 -- you know what, I
8 think of a lot them are marked 679. It's not the
9 page number. It's the -- again, we have this issue
10 of the FDA not numbering pages. It's about the
11 fifth page in, sir. Have you found that?
12 A. Yes.
13 Q. Okay. Okay. So we know sample 84,
14 because we just talked about it with Lewin, was
15 Shower to Shower, right?
16 A. Yes.
17 Q. And we know that the FDA confirmed
18 that there was tremolite actinolite in sample 84,
19 true?
20 A. Tremolite actinolite, yes.
21 Q. Right? It says it right there. It
22 says that, sample 84 contained a 107 fibers of
23 tremolite actinolite per gram, right, or per
24 milligram?
25 A. Yes, tremolite actinolite, yes.

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1 Q. Okay. And you and I can do the
2 simple math on this, right? There are -- if it's
3 107 fibers -- by the way, 107 fibers would be
4 fibrous, can we agree?
5 A. No, we can't agree unless you own a
6 microscope.
7 Q. We can't agree that 107 fibers is not
8 fibrous, sir? Are we still having this argument?
9 A. Yes.
10 Q. Okay, alright.
11 107 fibers in a milligram, right?
12 A. Yes.
13 Q. A milligram -- how many milligrams
14 are there in a gram?
15 A. A thousand.
16 Q. There's a thousand.
17 So, if we wanted to know what it is per
18 gram, we have to multiply this times a thousand,
19 correct? Do we want to know what it is per gram?
20 A. Yeah, 107,000.
21 Q. And it's tremolite, right, tremolite
22 actinolite, right?
23 A. Yes. It doesn't say asbestos. It's
24 just described as tremolite actinolite.
25 Q. Okay. Well, according to Johnson &

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1 Johnson's definitions, if it's fibrous, right,
2 fibrous versions of the amphiboles including
3 tremolite it's asbestos, right?
4 A. If it's in the fibrous form, it could
5 be asbestos.
6 Q. Okay. And he found --
7 A. They tested in the fibrous form as
8 opposed to a fiber.
9 Q. Okay. And by light microscopy he
10 found 107 of them, right?
11 A. He found 107 fibers, yes.
12 Q. Fibers, right?
13 A. But he doesn't say they're asbestos
14 fibers. He doesn't describe them as fibrous, which
15 would make them asbestos, according to the J4-1
16 definition.
17 Q. According to the industry definition
18 that came out three years after this, right?
19 A. It's a microscopic -- microscopist
20 definition to -- if you're going to describe
21 asbestos --
22 MR. PANATIER: I'm going to object to
23 nonresponsive. Move to strike.
24 MS. SULLIVAN: Your Honor, I'm going
25 to object to interrupting his answer. That was

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1 responsive.
2 THE COURT: I'm going to strike that
3 response and instruct the witness to please listen
4 to the question being asked and only answer that
5 question.
6 One more time.
7 BY MR. PANATIER:
8 Q. J4-1, which came out three years
9 after this, right?
10 A. Yeah, the final version, three
11 years -- I think it's three years. Yeah, three
12 years later.
13 Q. Why would an analyst for the FDA be
14 using a version that wasn't even invented yet, sir?
15 A. A version of J4-1?
16 Q. A method that hadn't been invented
17 yet.
18 A. I don't know. But it was -- it was
19 certainly in process development at that time.
20 Q. He would -- and I'm not being
21 hyperbolic here. It might sound like it. But he
22 would literally need a time machine to go and use a
23 method that hadn't been invented yet, right?
24 MS. SULLIVAN: Objection, lawyer
25 argument.

<p style="text-align: right;">Page 78</p> <p>1 THE COURT: Counsel, let's --</p> <p>2 MR. PANATIER: Okay.</p> <p>3 THE COURT: -- get this back on</p> <p>4 track.</p> <p>5 MR. PANATIER: Yes, your Honor.</p> <p>6 BY MR. PANATIER:</p> <p>7 Q. So we've got what he finds.</p> <p>8 Now, last week -- this is Defense</p> <p>9 Exhibit 7873. It's in evidence. We saw this.</p> <p>10 Counsel for Johnson & Johnson showed this</p> <p>11 document to Dr. Weber.</p> <p>12 Have you seen this document before? It's</p> <p>13 not in there. This is a Defense exhibit.</p> <p>14 A. I think I have, yes.</p> <p>15 Q. Okay. Do you see that up at the top,</p> <p>16 there's a sample numbered 084-802H, right?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what sample 084-802H is?</p> <p>19 A. No.</p> <p>20 Q. Do you have any idea?</p> <p>21 A. No.</p> <p>22 Q. In fact, under "product" it says,</p> <p>23 "Johnson's Baby Powder," right?</p> <p>24 A. That's what someone's written.</p> <p>25 Q. Right. And then here it's crossed</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Signed by John Stewart, right?</p> <p>2 A. Yes.</p> <p>3 Q. Now, last week Counsel for Johnson &</p> <p>4 Johnson suggested that this was the actual analysis</p> <p>5 for Shower to Shower.</p> <p>6 Did you know that Counsel for Johnson &</p> <p>7 Johnson did that?</p> <p>8 A. No.</p> <p>9 Q. Okay. This couldn't have been the</p> <p>10 analysis for Shower to Shower sample 84, could it</p> <p>11 have?</p> <p>12 A. Well, that's dated -- sorry, remind</p> <p>13 me, September '74.</p> <p>14 Q. And this says as of, right here, as</p> <p>15 of December 21st, 1973 samples, Lewin's</p> <p>16 identification 84 were analyzed for mineral content,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. So sample 84 Shower to Shower had</p> <p>20 been analyzed ten months before whatever this is was</p> <p>21 sampled, correct?</p> <p>22 A. Well, before that report was done.</p> <p>23 Q. Right.</p> <p>24 A. That may have been a second version</p> <p>25 of the first one. I don't know. I'm not going to</p>
<p style="text-align: right;">Page 79</p> <p>1 out. It says "J&J baby PROD," maybe, product. Seal</p> <p>2 date 6 -- or 8/8/74, right?</p> <p>3 A. Yes.</p> <p>4 Q. So the seal on it had a date,</p> <p>5 August 8th, '74, right?</p> <p>6 A. I don't know whether the seal is on</p> <p>7 the product or that was the bag it came in. I don't</p> <p>8 know.</p> <p>9 Q. Yeah, right. We don't know what the</p> <p>10 seal was on, right?</p> <p>11 A. What seal was, no.</p> <p>12 Q. Okay. But it says, "Johnson's Baby</p> <p>13 Powder" and then the sample is "084-802H."</p> <p>14 You told us you don't know what sample that</p> <p>15 is or if it's just the designation for this sample,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. You have no basis to say that this</p> <p>19 was Shower to Shower, not Johnson's Baby Powder as</p> <p>20 is written here, correct?</p> <p>21 A. Not without information, no.</p> <p>22 Q. Right. And let's look at the bottom.</p> <p>23 This sample was reported September 18th, 1974. Do</p> <p>24 you see that?</p> <p>25 A. I do, yes.</p>	<p style="text-align: right;">Page 81</p> <p>1 speculate. There's a ten-month difference.</p> <p>2 Q. Is there ten months between</p> <p>3 December 1973 when they say they did the analysis on</p> <p>4 sample 84 and this sample which is identified as</p> <p>5 "baby powder" in September of '74?</p> <p>6 A. Well, there's ten months' -- ten</p> <p>7 months' difference.</p> <p>8 Q. And I think I might have said</p> <p>9 December '74 -- December '73, right?</p> <p>10 A. Yes, ten months' difference.</p> <p>11 Q. You have no basis to say that this</p> <p>12 count sheet shown to the jury last week is Shower to</p> <p>13 Shower, do you?</p> <p>14 A. I don't have that basis unless there</p> <p>15 is other documentation to validate it.</p> <p>16 MR. PANATIER: This will be</p> <p>17 Exhibit 3441, your Honor.</p> <p>18 THE COURT: Thank you.</p> <p>19 MR. PANATIER: Yes, your Honor.</p> <p>20 BY MR. PANATIER:</p> <p>21 Q. Here you go, Doctor. Do you see that</p> <p>22 this is -- it says, "Italian medicated Grantham talc</p> <p>23 from R. Rolle's files"?</p> <p>24 A. Yes.</p> <p>25 Q. That's a Robert Rolle?</p>

<p style="text-align: right;">Page 82</p> <p>1 A. Yes.</p> <p>2 Q. At J&J, right?</p> <p>3 A. (No response.)</p> <p>4 Q. And do you see on the next page the</p> <p>5 Bates Stamps? These are J&J Bates Stamps, right?</p> <p>6 A. Yes.</p> <p>7 Q. These are handwritten notes, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And just so we get our bearings,</p> <p>10 they're entitled, "Lewin samples of Shower to Shower</p> <p>11 August 10, 1972," right?</p> <p>12 A. Yes.</p> <p>13 MR. PANATIER: We offer these into</p> <p>14 evidence.</p> <p>15 MS. SULLIVAN: No objection.</p> <p>16 THE COURT: Admitted.</p> <p>17 (Plaintiff's Exhibit 3441 was moved</p> <p>18 into evidence.)</p> <p>19 BY MR. PANATIER:</p> <p>20 Q. Alright. You see it's, "Italian</p> <p>21 medicated Grantham talc," right, on the cover?</p> <p>22 A. Yes, there are three products there,</p> <p>23 Italian talc, medicated talc and Grantham talc.</p> <p>24 Q. And then there are some handwritten</p> <p>25 notes about Lewin's samples of Shower to Shower,</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Yeah, fiber or rod, yes.</p> <p>2 Q. Right. And you can see that it</p> <p>3 says --</p> <p>4 MS. SULLIVAN: Your Honor, just in</p> <p>5 the interest -- for the sake of completeness, if I</p> <p>6 can have the third line down on that document read</p> <p>7 to the Jury.</p> <p>8 Q. "No crinkled fibers or small bundles</p> <p>9 of chrysotile asbestos were observed."</p> <p>10 MS. SULLIVAN: Thank you.</p> <p>11 Q. He found tremolite, he didn't see</p> <p>12 chrysotile?</p> <p>13 A. He found, yeah, tremolite described</p> <p>14 as rods, fiber rod, yeah.</p> <p>15 Q. And he's using plain polarized light,</p> <p>16 right?</p> <p>17 A. (No response.)</p> <p>18 Q. If you look down paragraph starting</p> <p>19 "observations"?</p> <p>20 A. Yes. Yes, he was using polarized</p> <p>21 light microscopy, yes.</p> <p>22 Q. Okay. And so that's the same method</p> <p>23 that was discussed in the Lewin meeting that the FDA</p> <p>24 had with Dr. Lewin that he would confirm with</p> <p>25 polarized light, right, or optical microscopy,</p>
<p style="text-align: right;">Page 83</p> <p>1 August 10, 1972.</p> <p>2 This is an internal document, correct?</p> <p>3 A. Yes.</p> <p>4 Q. About one fiber or of -- I don't know</p> <p>5 whether that says "or"...</p> <p>6 But "about one fiber or rod/needle every 500</p> <p>7 particles," correct?</p> <p>8 A. Yes, there's a rod every 500</p> <p>9 particles, yes.</p> <p>10 Q. Well, one fiber or rod/needle, right?</p> <p>11 A. Yes.</p> <p>12 Q. And about one-third of these are</p> <p>13 tremolite, two-thirds are roll talc or talc shards,</p> <p>14 right?</p> <p>15 A. Yeah, you read what is written.</p> <p>16 Q. So Dr. Rolle -- so this is Shower to</p> <p>17 Shower, sample 84 Lewin. This here was the FDA.</p> <p>18 And then Rolle, I think, we have him on our list</p> <p>19 here.</p> <p>20 Yeah, Robert Rolle, Assistant</p> <p>21 Director Analytical Research, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. In the same sample, Lewin</p> <p>24 Shower to Shower, he identifies "fiber rod/needle</p> <p>25 one per 500 particles," right?</p>	<p style="text-align: right;">Page 85</p> <p>1 correct?</p> <p>2 A. Well, this states polarized light</p> <p>3 microscopy.</p> <p>4 Q. And that is optical microscopy?</p> <p>5 A. There are two kinds of optical</p> <p>6 microscopy.</p> <p>7 Q. PLM?</p> <p>8 A. PLM and just the regular one that you</p> <p>9 have at school, yeah.</p> <p>10 Q. Right.</p> <p>11 A. Yeah.</p> <p>12 Q. Is Rolle using optical microscopy?</p> <p>13 A. He's using optical microscopy,</p> <p>14 polarized light --</p> <p>15 Q. Right.</p> <p>16 A. -- microscopy.</p> <p>17 Q. And just like Dr. Lewin, he doesn't</p> <p>18 see any chrysotile with it, does he?</p> <p>19 A. No.</p> <p>20 Q. Okay. But he does see tremolite as</p> <p>21 he describes it, "fiber" or "rod/needle," right?</p> <p>22 A. Yes.</p> <p>23 Q. "One every 500 particles," true?</p> <p>24 A. On that particular sample is what he</p> <p>25 sees, yes.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. Okay. And I think this is -- this is 2 perhaps illustrative for us. It says, "particle 3 density." 4 So he's looking at a very small area, right? 5 A. Yes. 6 Q. And that's an 18 square millimeter 7 area, right? 8 A. Yes. 9 Q. So what would you say, is that a 10 little bit more than four millimeters by four 11 millimeters, something like that, that would get us 12 to 16? 13 A. No 18 millimeters square, means 18 14 millimeters by 18 millimeters. 15 Q. I don't think it does. 16 A. No. 18 square millimeters would be 6 17 by 3. 18 Q. Right. That's what he's looking at. 19 A. No, it isn't. He's looking 18 20 millimeters square, which is a grid square. 21 Q. Okay. So you're saying he's looking 22 at 18 by 18, right? 23 A. Well, that's what I'm reading, yes. 24 Q. Okay. I'm not going to argue about 25 whether it was 18 square or 18 square millimeters.</p>	<p style="text-align: right;">Page 88</p> <p>1 the last page, they also looked at their own 2 retained samples of Shower to Shower. Do you see 3 that? 4 A. I do, yes. 5 Q. Right. So they have -- so they had 6 it looks like from February of '70 through August of 7 1971, right? 8 A. Yes. They report trace tremolite. 9 Q. And, again, he says, "no chrysotile 10 observed," true? 11 A. Yes. 12 Q. But he has 1, 2, 3, 4 results where 13 he identifies tremolite, correct? 14 A. Trace tremolite, yes. 15 Q. Yeah. Did this go to the FDA? 16 A. I don't know. This is someone's 17 handwritten notes. It may well have gone into a 18 typed-up report. But this is just handwritten 19 notes. 20 MR. PANATIER: Your Honor, I'm moving 21 on to another topic, if you we like to do a break 22 now. 23 THE COURT: This would be a good 24 time. Thank you. 25 Members of the Jury, we're going to</p>
<p style="text-align: right;">Page 87</p> <p>1 We know it was a small area, right? 2 A. Yes. 3 Q. And he said that there were 125,000 4 particles in that area, right? 5 A. Yes. 6 Q. And that one of every 500 was 7 tremolite, right? 8 A. That's what he reported on that 9 particular sample. 10 Q. One out of every 500 -- 11 A. Yes. 12 Q. -- right? 13 So how many times does 500 go into 125,000? 14 Here, I have a calculator on my phone. Okay. So 15 I'll just divide, right, I would just divide 125,000 16 divided by 500, correct? I get 250. 17 A. Sounds right. 18 Q. Okay. So that would be in the area 19 he looked at. That would equate to about 250 20 tremolite. And we'll do fiber/rod/needle, right? 21 A. Yes. 22 Q. Did his analysis go to the FDA? 23 A. I don't know. This is a -- it looks 24 like a hundred page from an exercise book. 25 Q. They also looked at -- if you go to</p>	<p style="text-align: right;">Page 89</p> <p>1 take a 15-minute break. Please remember all the 2 instructions I've provided to you. No discussions 3 with regard to this case including testimony you've 4 heard this morning. Please be ready to be back up 5 here -- be ready to come back up at five of. No 6 research of any kind whatsoever. Thank you. 7 And then at five of just be 8 downstairs, bring them up and I will meet you in the 9 hallway. 10 THE COURT OFFICER: Jury exiting. 11 (Jury exits.) 12 (There is a discussion off the 13 record.) 14 THE COURT: So we're off the record. 15 (Recess taken 10:39 to 11:01 a.m.) 16 (Jury enters.) 17 THE COURT: Please be seated. Make 18 sure cell phones are turned off. 19 You may continue, Mr. Panatier. 20 MR. PANATIER: Thank you, your Honor. 21 BY MR. PANATIER: 22 Q. Mr. Hopkins, Johnson & Johnson was 23 aware that in the early 1970s a company called RT 24 Vanderbilt was selling talc that had tremolite in 25 it, correct?</p>

<p style="text-align: right;">Page 90</p> <p>1 A. There was a company called RT 2 Vanderbilt, but sold -- I think they owned a talc 3 mine in New York State, yes. 4 Q. Okay. So they were a company that 5 was selling talc, right? 6 A. Yes. 7 Q. Okay. And you're aware that they 8 were claiming that the tremolite in their talc was 9 not asbestos or nonasbestiform, right? 10 A. I'm not familiar with RT Vanderbilt. 11 I know that they had talc mine in New York State. 12 Johnson & Johnson never used it. But I'm aware that 13 they did have a talc mine. 14 MR. PANATIER: Okay. This is 15 Exhibit 2450. 16 Q. And if you would turn to April 13th, 17 1973 in your binder. This is a document I've shown 18 you before. 19 THE COURT: I'm sorry, Counsel, 20 what's the date? 21 MR. PANATIER: April 13, 1973, your 22 Honor. 23 THE COURT: Thank you. 24 BY MR. PANATIER: 25 Q. You found that, sir?</p>	<p style="text-align: right;">Page 92</p> <p>1 this part down below. "Only a couple broader 2 aspects were made reasonably clear. One, Johns 3 Manville. Now Johns Manville was a pretty 4 well-known asbestos miner manufacturer of products 5 right? 6 A. I've heard of them, yes, yes. 7 Q. "Johns Manville is going to take the 8 position that tremolite is an asbestos mineral and 9 they will not go along with the type of science 10 which Vanderbilt has been indicating aimed at 11 confusing the mineralogy of talc." Right, isn't 12 that what Mr. Ashton wrote there? 13 A. You've read what was written. 14 Q. That Vanderbilt tried to confuse the 15 mineralogy of talc, true? 16 A. Well, that was Vanderbilt's -- 17 whatever Vanderbilt were doing, yeah. 18 Q. Okay. 19 A. I can't speak for Vanderbilt. 20 Q. We're going to go from that document 21 to the next one. 22 The next one is dated April 24th, which is 23 11 days later. And this is Exhibit 2452. So 24 April 24th is what you're looking for, sir, 1973. 25 You found that?</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Yes. 2 Q. Okay. This is a Johnson & Johnson 3 memo with the date I've just stated, correct? 4 A. Yes. 5 Q. From Bill Ashton, right? 6 A. Yes. 7 MR. PANATIER: I'm going to offer 8 this into evidence your Honor 2450. 9 MS. SULLIVAN: No objection. 10 THE COURT: So admitted. 11 (Plaintiff's Exhibit 2450 was moved 12 into evidence.) 13 BY MR. PANATIER: 14 Q. "I attended a meeting with talc 15 manufacturers which R. Bacon of Vanderbilt called 16 had his New York offices yesterday." 17 So Johnson & Johnson met with RT Vanderbilt, 18 right? 19 A. Yes. 20 Q. Vanderbilt's idea was to try to 21 elicit and unify presentations, which talc firms 22 might present to the US Bureau of Mines at the Talc 23 Safety Symposium scheduled for May 8th in Washington 24 D.C. 25 And the part I'm interested in is</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Yes. 2 Q. Okay. And that is Plaintiff's 3 Exhibit 2452. This is another J&J memo, right? 4 A. Yes. 5 MR. PANATIER: Okay. We offer this 6 into evidence, your Honor. 7 MS. SULLIVAN: No objection. 8 THE COURT: So admitted. 9 (Plaintiff's Exhibit 2452 was moved 10 into evidence.) 11 Q. 11 days later this is a memo from 12 Mr. Nashed, right? 13 A. Yes. 14 Q. "Mr. Norwood said he followed my 15 advice to adopt the attitude that Pfizer is there to 16 see what they can do to help FDA in methodology. He 17 also followed my advice and did not mention that he 18 had been talking to Johnson & Johnson." 19 And by the way, sorry, I didn't read this at 20 first. "I talked with Mr. Norwood of Pfizer." So 21 that's who that is, right? 22 A. It appears to be, yes. 23 Q. Yeah. On the phone today to touch 24 base on their current activities in their views of 25 Vanderbilt and the Bureau of Mines Meeting."</p>

<p style="text-align: right;">Page 94</p> <p>1 Alright. So sorry I didn't give us that framework, 2 but now we have it. 3 A. Yes. 4 Q. He said that, "subsequent to the 5 meeting they have been informed by Sherwin Williams 6 that they will discontinue use of New York talc 7 because of their feeling that tremolite may be a 8 problem, i.e., Vanderbilt's story was not accepted." 9 Do you see that? 10 A. Yes. Yes, you read what is written. 11 Q. "Bureau of Mines Meeting. Mr. 12 Norwood expressed the view that Vanderbilt is acting 13 very rationally in raising the question on talc 14 safety and he agreed that they are desperate if they 15 lose their tremolite is safe argument. They will be 16 out of the talc business and, therefore, would not 17 be interested in defending safety of talc, per se. 18 He felt that questions on safety of talc fibers 19 other than tremolite could reflect on the whole talc 20 industry. He thought Vanderbilt's defense of 21 tremolite is very weak and that the meeting at the 22 Bureau of Mines is bound to raise problems for the 23 talc industry. Therefore, they've decided to avoid 24 all involvement with Vanderbilt." 25 You're aware that Vanderbilt was</p>	<p style="text-align: right;">Page 96</p> <p>1 A. No. You have read what is written. 2 Q. Let's go to the next one. This 3 should be May 2nd, 1973. So this is a couple weeks 4 later. This is Exhibit 2455, May 2nd, 1973, sir. 5 Let me know when you've found that. 6 A. Yeah, we've got it. Yeah, we're 7 there. 8 Q. Got it? Okay. 9 A. Yeah. 10 Q. Another J&J memo, right? 11 A. Yes. 12 Q. This one is from Nashed again, right? 13 A. Yes. 14 MR. PANATIER: We offer Exhibit 2455 15 into evidence. 16 MS. SULLIVAN: No objection. 17 THE COURT: Admitted. 18 (Plaintiff's Exhibit 2455 was moved 19 into evidence.) 20 BY MR. PANATIER: 21 Q. This is a meeting between Johns 22 Manville and J&J, right? 23 A. Yes. 24 Q. Okay. "The Johns Manville group 25 agreed with us that the efforts by Vanderbilt were</p>
<p style="text-align: right;">Page 95</p> <p>1 trying to argue that the tremolite in their talc was 2 not an issue, correct? 3 A. Well, I can't speak for Vanderbilt. 4 They're a separate company. But you read what was 5 written. 6 Q. They were trying to say that their 7 tremolite was not asbestos, correct? 8 A. Well, you read what is written. And 9 again, I'm not speaking for Vanderbilt. They're a 10 separate company and this quotes what they were 11 saying. 12 Q. Okay. Dr. Nashed reports, "I called 13 Pfizer today to determine FDA's attitude toward 14 microscopy. Mr. Stanley, Mr. Norwood's associate, 15 said that the FDA microscopist was of the opinion 16 that optical microscopy was not suitable as a 17 control method." 18 Now, sir, this is April 24, 1973. 19 This is right around the time that Lewin's second 20 report is coming out, a confirmation of his results 21 using optical microscopy, correct? 22 A. It describes the word "optical 23 microscopy." It doesn't break it down as to 24 polarized or regular. 25 Q. Well, and neither does this, does it?</p>	<p style="text-align: right;">Page 97</p> <p>1 somewhat unsophisticated and, in general, they 2 expect that the Bureau of Mines will adopt the 3 asbestos standards for tremboletic talc and fibrous 4 talc. Fibrous talc, according to the ACGIH it's 5 talc containing asbestos." 6 Okay. And you can see that there's 7 several presentations that are given, right? 8 A. Yes. 9 Q. Okay. "We," that's Johnson & 10 Johnson, right? 11 A. Yes. 12 Q. "We told the Johns Manville group 13 that our efforts have been mainly directed to the 14 FDA on cosmetic uses of talc. We outlined in the 15 status of the safety of cosmetic talc." 16 And they go through what they have done and 17 some of which you and I have discussed, correct? 18 A. Yes. 19 Q. Okay. Let's go to the last page. 20 "They saw no chance of success for Vanderbilt 21 claiming tremolite not to be asbestos," right? 22 A. You read what is written. 23 Q. That's 1973, 46 years ago, right? 24 A. Yes, that's what -- that's what Johns 25 Manville stated.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. Right. Vanderbilt was trying to 2 claim that tremolite was not asbestos and they saw 3 no chance of success for them doing that, right? 4 A. Johns Mansville stated they saw no 5 chance of success for Vanderbilt claiming tremolite 6 not being asbestos. 7 Q. For the past two days whenever I have 8 shown you a reference to fibers of tremolite, 9 needles of tremolite, rods of tremolite, you said 10 that's not asbestos, haven't you? 11 A. Unless -- unless it's proven to be in 12 the asbestiform version, you cannot say that the 13 tremolite when it's described as rods is asbestos. 14 MR. PANATIER: Your Honor, I object 15 to nonresponsive. 16 THE COURT: Objection sustained. 17 MR. PANATIER: Move to strike. 18 THE COURT: Stricken. 19 BY MR. PANATIER: 20 Q. Sir, for the past two days anytime 21 I've shown you a needle, fiber, fibers or rods of 22 tremolite you said it's not asbestos; is that 23 correct? 24 A. Yes, that is correct. 25 Q. Thank you, sir, okay.</p>	<p style="text-align: right;">Page 100</p> <p>1 of Johnson's Baby Powder"? 2 A. Yes. 3 Q. It says "25 samples of Johnson's Baby 4 Powder representing retained samples." 5 Those are samples, by the way, that are held 6 back by the company in case they want to look at 7 what was in a certain lot at a certain time, 8 correct? 9 A. "A retained sample" is one you hold 10 back in case there is a question on it, if someone 11 said it irritated my skin or whatever. You keep it 12 in the -- in a cupboard until you don't need it. 13 Q. You can go back and look at it? 14 A. Yeah. 15 Q. "Retained samples from both ESDP" -- 16 and what does "ESDP" stand for? 17 A. It stands -- it's the place where 18 they manufactured -- Eastern Surgical Dressings 19 Plant, just down the road here. 20 Q. "Both ESDP and Chicago facilities 21 were examined microscopically by the dispersion 22 staining technique for the presence of tremolite. 23 Four of these samples are suspected of containing 24 tremolite based on the finding of 1 or 2 fibers per 25 sample, which satisfy the color/morphology</p>
<p style="text-align: right;">Page 99</p> <p>1 Next document is going to be 2 April 27th -- I'm sorry, April 19th -- yeah, 3 April 19, 1973. This is Exhibit 2451. 4 Have you found that one, sir? 5 A. Yes. 6 Q. Alright. And do you see that that is 7 a memo from David H. Hammer to Rolle and then it's 8 marked out and they marked in someone else's 9 initials, right? 10 A. Yes. 11 Q. Okay. That's a Johnson & Johnson 12 memo, true? 13 A. Yes. 14 Q. It's CC'd to about nine people? 15 A. Yeah. 16 Q. Right? 17 MR. PANATIER: Your Honor, we offer 18 Exhibit 2451 into evidence. 19 MS. SULLIVAN: No objection. 20 THE COURT: Admitted. 21 (Plaintiff's Exhibit 2451 was moved 22 into evidence.) 23 BY MR. PANATIER: 24 Q. Sir, do you see that this is 25 "dispersion staining examination of retained samples</p>	<p style="text-align: right;">Page 101</p> <p>1 criteria." 2 Now, they're just looking for 3 tremolite, right? 4 A. Yeah, that would appear to be what 5 the memo is about. 6 Q. It doesn't say they're looking for 7 tremolite asbestos, right? 8 A. No, it's just -- the memo states what 9 it states. 10 Q. But according to you, the presence of 11 tremolite is not a problem, it's tremolite asbestos 12 that's the problem? 13 A. Tremolite asbestos would be a 14 problem. 15 Q. Is tremolite a problem? 16 A. It's asbestos, no. 17 Q. But yet here in 1973 they're 18 investigating the retained samples for tremolite, 19 right? 20 A. Right, appears to be, yes. 21 Q. Not a problem, right? 22 A. The microscopist is looking at those 23 samples. 24 Q. Okay. So those are the samples and 25 let's look at the results. This will be April 27,</p>

<p style="text-align: right;">Page 102</p> <p>1 '73. It's likely the next document in your folder. 2 It's Exhibit 2454. 3 A. Yes. 4 Q. Do you see that? 5 A. I have that, yeah. 6 Q. Okay. And are those the results of 7 those retained samples, sir? 8 A. They appear to be. 9 Q. Okay. You can look at the bottom of 10 this document and you can see that the samples match 11 -- 12 MR. PANATIER: Your Honor, we offer 13 this into evidence, 2454. 14 MS. SULLIVAN: No objection. 15 THE COURT: Admitted. 16 (Plaintiff's Exhibit 2454 was moved 17 into evidence.) 18 Q. And, sir, you can see the samples are 19 here and they match. Do you see that? 20 A. Yes. 21 Q. Okay. So if we look here at the 22 results, "petrographic optical microscopy revealed 23 trace amounts of amphibole in each of the above 24 samples. Based on the numbers and particles 25 scanned, we estimate trace amounts to be .001 to .01</p>	<p style="text-align: right;">Page 104</p> <p>1 So they are amphibole particles that they found, 2 right? 3 A. They're amphiboles, yes. 4 Q. They are from between 5-to-1 to 6 or 5 7-to-1 in shape, right? 6 A. Yeah, they're amphibole rods, yeah. 7 Q. And they are parallel sided, right? 8 A. Yes. 9 Q. Alright. Let's talk about the 10 definition of fiber in Johnson & Johnson. 3-to-1 11 parallel sides, right? 12 A. That's that -- that's that definition 13 you have on that chart. 14 Q. That's the analytical definition that 15 Johnson & Johnson uses to define asbestiform 16 minerals to find asbestiform minerals in their talc, 17 right? 18 A. It is not. It is the definition 19 that's written on the specification. It is not the 20 system for the -- 21 MR. PANATIER: Your Honor, I object 22 as nonresponsive, your Honor. 23 MS. SULLIVAN: I think he's answering 24 the question. 25 THE COURT: Objection sustained.</p>
<p style="text-align: right;">Page 103</p> <p>1 by weight," right? 2 A. Yeah. 3 Q. Okay. And they tell us what the 4 shape of these particles were and they say 5 "prismatic columnar." That's mean like a column, 6 right? 7 A. Yeah, like my pen. 8 Q. Like your pen. 9 A. Yeah. 10 Q. Okay. "Parallel sided," right? 11 A. Yes. 12 Q. Rods? 13 A. Yeah. 14 Q. And see how it says, "size from 20 by 15 4 microns," that would be 5-to-1, would it not? 16 A. Yes. 17 Q. And 20 by 30. What would that be 18 about 6 or 7-to-1? 19 A. 200 by 30, isn't it? Yeah, 200 by 20 30. 21 Q. I'm sorry, 200 by 30. That's my -- 22 my error. That would be about 6 or 7-to-1? 23 A. Yes, yes. 24 Q. Right. The optical properties of the 25 particles are closer to actinolite than tremolite.</p>	<p style="text-align: right;">Page 105</p> <p>1 BY MR. PANATIER: 2 Q. Here's the question I'm asking. 3 "3-to-1 parallel sides" is the 4 definition of "fiber" used by Johnson & Johnson in 5 testing method 7024 to define asbestiform minerals 6 in the talc, correct? 7 A. I don't see where asbestiform. I... 8 Q. Sir, you and I have already been over 9 this. This is in evidence testing method 7024. 10 Look at the board. Elongated particle, right? 11 A. Yes. On that definition TM7024 that 12 is what is stated. 13 Q. Okay. And look, we have elongated 14 particles, do we not? 15 A. We do. 16 Q. We have longer than 3-to-1 aspect 17 ratios, correct? 18 A. Yes. 19 Q. We have parallel sides, correct? 20 A. Yes. 21 Q. By this definition, these are 22 asbestiform minerals by Johnson & Johnson's own 23 definition? 24 A. By that definition but not by the 25 microscopist's.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. Just by Johnson & Johnson's 2 definition, right? 3 A. By that -- what you've copied down 4 there, yes. 5 Q. You know I didn't write that 6 document, right? 7 A. No, you -- as you say, you just 8 copied it down. That's okay. 9 Q. So those were four samples where they 10 found actinolite tremolite, right? 11 A. They found actinolite tremolite rods. 12 Q. Do you know if that went to the FDA? 13 A. I don't know. 14 Q. Okay. The next document will be 15 dated January 18, 1974. So it should be a few 16 documents before what we just went through, I think. 17 This is Exhibit 2506. 18 A. '74 or '73? 19 Q. 1974, January 18, '74. Let me know 20 if you have any trouble finding it. 21 THE COURT: It's in Binder 2. 22 MR. PANATIER: Binder 2. 23 Q. I think you put it on the ground. 24 A. Oh, that's where it is. 25 Q. These documents will not hide from</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. The FDA asks Johnson & Johnson to do 2 a calculation about the amount of asbestos that they 3 believe to be safe in baby powder, correct? 4 A. They asked Johnson & Johnson to do a 5 calculation, a mathematical calculation, yes. 6 Q. And when they said, can you do a 7 mathematical calculation that tells us how much 8 asbestos is safe in baby powder, I assume Johnson & 9 Johnson said zero, right? 10 A. Well, that wasn't the exact question 11 that was asked. They were asked to give a question 12 -- sorry. They were asked to give a mathematical 13 calculation as to what may be present if there was a 14 certain amount of asbestos there. 15 Q. When they were asked by the FDA what 16 amount is safe in baby powder, did they say zero 17 because our policy is zero tolerance? 18 A. I don't know whether they said that. 19 But if FDA -- if the FDA asks you to do something. 20 Q. Sir, if you don't know, you don't 21 know, okay? 22 A. I don't know. 23 Q. Okay. 24 A. I don't know. 25 Q. That's fine.</p>
<p style="text-align: right;">Page 107</p> <p>1 you. 2 A. You need to give me a bigger table. 3 Right, '74, give me the... 4 Q. Yes, January 18, '74. 5 A. Okay, we have that. 6 Q. Have you found that? 7 A. Yes. 8 Q. Okay. That's a Johnson & Johnson 9 memo, correct, sir? 10 A. Yes. 11 Q. It is from Hildick-Smith and Nashed, 12 right? 13 A. Yes. 14 Q. Okay. Now, this is -- 15 MR. PANATIER: We offer 2506 into 16 evidence. 17 MS. SULLIVAN: No objection. 18 THE COURT: Admitted. 19 (Plaintiff's Exhibit 2506 was moved 20 into evidence.) 21 BY MR. PANATIER: 22 Q. This is another meeting with the FDA. 23 The meeting was January 16th and the memo is 24 January 18th, right? 25 A. Yes.</p>	<p style="text-align: right;">Page 109</p> <p>1 Okay. Now, Eiermann, Eiermann, he is 2 at this meeting, correct? 3 A. He was one of several FDA people, 4 yes. 5 Q. Because I've been wanting to ask you 6 about him, but I keep forgetting. 7 Eiermann, he's at the FDA, right? 8 A. Yes. 9 Q. But there's an asterisk by his name, 10 right? 11 A. Yes. 12 Q. And if we go to the bottom, it says 13 he's a former Johnson & Johnson employee in Brazil, 14 right? 15 A. That was one of his previous 16 employers, Johnson & Johnson Brazil, yes. 17 Q. And now he's with the FDA, right? 18 A. Yes, yes, no secret. 19 Q. So let's get to that calculation. So 20 see where Johnson & Johnson says here, "Our very 21 preliminary calculation indicates that substantial 22 asbestos can be allowed safely in a baby powder"? 23 Did they say that to the FDA? 24 A. That was in response to a question. 25 Q. I know.</p>

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1 A. To say if there are 1 percent, how
2 much would that --
3 MR. PANATIER: Your Honor, I object
4 as nonresponsive.
5 A. Okay. That's what is written.
6 THE COURT: Objection is sustained.
7 A. That is what is written.
8 Q. Okay. Because that's all I asked
9 you.
10 A. That is what is written, yes.
11 Q. Is that what was said to the FDA?
12 A. That is what is written, yes.
13 Q. And Eiermann -- Wodicka, Mr. Wodicka
14 appeared skeptical of Dr. Eiermann's approach to the
15 problem because it was Eiermann, the former J&J
16 employee, who had asked them to do the calculation,
17 right?
18 A. He had asked him to do a calculation
19 based on certain hypothesis, yes.
20 Q. And what Wodicka says is, he implied
21 that what is safe for a miner may not be safe for a
22 baby, right?
23 A. Yes, I wouldn't disagree.
24 Q. Okay. Has Johnson & Johnson ever
25 told the public what they told the FDA in 1974 that

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1 they believed that substantial asbestos can be
2 safely allowed in a baby powder?
3 A. What they actually told FDA --
4 MR. PANATIER: Your Honor -- your
5 Honor, I'm objecting, nonresponsive.
6 A. In that case, no.
7 MR. PANATIER: I would ask the
8 witness to answer the question.
9 Q. No, they have not, correct?
10 A. They have not stated that sentence
11 that was written in this report.
12 Q. Okay. What Johnson & Johnson has
13 always told the public is zero tolerance, right?
14 A. And that's still the case.
15 Q. Do you believe it was the case right
16 here when they told this to the FDA?
17 A. Yes.
18 Q. Okay. And then Dr. Fuller of Johnson
19 & Johnson stressed that Johnson & Johnson has a
20 policy of full cooperation with the FDA and that if
21 the results of any scientific studies show any
22 question of safety of talc, Johnson & Johnson will
23 not hesitate to take it off the market, right?
24 A. Yes.
25 Q. Sir, don't you agree that just based

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1 on what we've gone through so far, what's in our
2 inbox, was enough to present the question about the
3 safety of their talc?
4 A. No.
5 Q. Okay. But if there ever was a
6 question, they should take it off the market, right?
7 A. If there was a genuine question
8 relating to safety, yes.
9 Q. So, if there was "a genuine
10 question."
11 And what do you mean by "a genuine
12 question"?
13 A. The question where the answer is that
14 there's a significant problem or a problem. In
15 other words, you can have a question, I can have a
16 question, but it has to be one where there is
17 evidence to say this question is valid.
18 Q. So, sir, does Johnson & Johnson agree
19 that the consumers of its products should be able to
20 make their own health and safety decisions about
21 whether or not to use that product?
22 A. Yes.
23 Q. And does Johnson & Johnson agree that
24 they should provide full information to those
25 people, those consumers about the products that they

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1 are manufacturing and selling?
2 A. Yes.
3 Q. And that Johnson & Johnson shouldn't
4 make risk decisions for consumers, consumers should
5 be able to make their own risk decisions, right?
6 A. Yes.
7 Q. Okay. So far in everything that we
8 have gone through where we found fibers of
9 tremolite, needles of tremolite, rods of tremolite,
10 none of that was provided to the public, was it?
11 A. No.
12 Q. Okay.
13 A. For good reason.
14 Q. Do you know whether or not the
15 consumers who were purchasing it thought it was a
16 good reason?
17 A. I cannot speak or hypothesize what
18 consumers think.
19 Q. Let's go to the next document. This
20 one will be 1974, April 24, 1974. There were two
21 primary ore bodies in the '70s which Johnson &
22 Johnson was using.
23 The biggest, the one that produced the most
24 talc was Hammondsville Cosmetic, correct?
25 A. The Hammondsville mine produced

<p style="text-align: right;">Page 114</p> <p>1 cosmetic talc, yes. 2 Q. Okay. And the other one was 3 Argonaut, that was qualified in '74 or '75 and went 4 open in about '76; is that true? 5 A. It was never used commercially until 6 around about 1995 for cosmetic talc. 7 Q. It was qualified in the '70s? 8 A. It was qualified in the '70s, yes, 9 but it wasn't used in cosmetic talc until the -- 10 '95, '96. 11 Q. Okay, alright. And we'll address 12 that a little bit later. 13 They qualified it 15 to 20 years earlier, 14 right? 15 A. Yes, but they had sufficient in the 16 Hammondsville mine not to need it. 17 Q. And when they qualified the Argonaut 18 ore body, Johnson & Johnson knew it contained 19 chrysotile asbestos, correct? 20 A. No. 21 Q. No, alright. 22 Let's look at this document dated April 24, 23 1974, okay? Can you find that one, sir, please? 24 A. Yes. 25 Q. Have you found that?</p>	<p style="text-align: right;">Page 116</p> <p>1 knew there was chrysotile asbestos in the Argonaut 2 ore body, right? Right? 3 A. Which Argonaut ore body? There are 4 two Argonaut mines. 5 Q. What does this say? 6 A. Well, this describes -- this is a 7 generic one talking about the Argonaut ore body. 8 Q. Are you saying that there is another 9 Argonaut mine or are you saying that through time 10 they pulled from different areas in Argonaut? 11 A. There are two Argonauts. There's the 12 main ore body, south Argonaut and the east Argonaut. 13 Q. Okay. Anyway -- 14 A. That's the ore body which covers many 15 acres. 16 Q. The question I asked you not one 17 minute ago, was Johnson & Johnson knew there was 18 chrysotile asbestos in the Argonaut ore body and you 19 said no, correct? 20 A. Not in the -- not in the main ore 21 body. 22 Q. Can you answer the question. Did you 23 say yes to my question or did you say no to my 24 question? 25 A. I said no to your question.</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Yes. 2 Q. Okay. You've got it. This is a 3 McCrone report entitled, "Examination of Talc 4 Samples Argonaut Ore Body," right? 5 A. Yes. This is -- they looked at 38 6 core samples from a new ore body. 7 Q. One second, step by step. 8 A. Yes. 9 Q. Hold on. It is what I represented it 10 was, right? 11 A. It's -- it's examination of samples. 12 Q. Right. 13 A. Yes. 14 Q. I'm just getting the title, okay. 15 April 24, 1974, true? 16 A. Yes. 17 Q. Okay. 18 MR. PANATIER: Your Honor, we offer 19 this into evidence. 20 MS. SULLIVAN: No objection. 21 THE COURT: Admitted. 22 (Plaintiff's Exhibit 2049 was moved 23 into evidence.) 24 BY MR. PANATIER: 25 Q. Now, I asked you if Johnson & Johnson</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. Alright. Let's look at this 2 document, which is an examination of talc samples 3 from the Argonaut ore body, shall we, okay? 4 A. From the Argonaut ore body, yes. 5 Q. Right. This is the one they were 6 qualifying for baby powder, correct? 7 A. They were looking at 15 years 8 previously for baby powder as a possibility, yes. 9 Q. Okay. "An intensive examination has 10 been made by XRD and electron microscopy of 38 core 11 samples," right? 12 A. Yes. 13 Q. "From a new ore body which Windsor 14 Minerals, Inc., are contemplating exploiting. The 15 examination was undertaken to determine the 16 mineralogical content of core samples and, in 17 particular, whether or not there was any significant 18 content of asbestiform minerals in the ore body. 19 For comparison three core samples from the current 20 ore body were also examined." 21 Now, here's what it says, "The 22 majority of the samples showed no evidence of 23 asbestiform minerals and 15" -- now they did 38, 24 right? 25 A. Yes.</p>

<p style="text-align: right;">Page 118</p> <p>1 Q. "Of the 15 that did show an 2 asbestiform mineral, only one exceeded an estimated 3 level of 0005 percent," right? 4 A. Yes. 5 Q. Now, you and I discussed first thing 6 yesterday that with tens to hundreds of trillions of 7 particles per bottle, even if it was just 1 trillion 8 and you had .00001 percent, that's still 10 million 9 particles of asbestos, correct? 10 A. Yes. 11 Q. Okay. So by the way, they found 12 asbestos in the Argonaut ore body, right? 13 A. In one part of the ore body, yes. 14 MS. SULLIVAN: And, your Honor, just 15 in the interest of completeness, I ask that Counsel 16 read the conclusion of this paragraph right below 17 that. 18 MR. PANATIER: Right below that? I 19 haven't gotten there, your Honor. 20 THE COURT: Whenever you get there. 21 MR. PANATIER: I will. 22 THE COURT: Thank you. 23 BY MR. PANATIER: 24 Q. Now look at what it says. "It is 25 anticipated that the beneficiation" -- that's the</p>	<p style="text-align: right;">Page 120</p> <p>1 amphibole, yes. 2 Q. And by the way, when we say "low 3 sensitivity," the lower the better, correct? If you 4 say high -- 5 A. The stricter -- 6 Q. Right. 7 A. The stricter the better, yes. 8 Q. Right. So, if you say, "high 9 sensitivity," that's actually poorer sensitivity 10 than something that is low sensitivity, right? 11 A. Yes. 12 Q. Okay. But they also did electron 13 microscopy. 14 A. They did, yes. 15 Q. It starts there. 16 A. Yeah. 17 Q. And they say, "As will be seen from 18 Table 2, only two samples showed a level above 0005 19 the actual figures being 007 and 001 respectively. 20 For chrysotile asbestos plus, approximately, 21 .0001 percent of fibrous tremolite." 22 Now, right there he's describing the 23 asbestos they found as fibrous tremolite, right? 24 A. Yes. 25 Q. Okay. "Excluding" -- excluding I</p>
<p style="text-align: right;">Page 119</p> <p>1 flotation, right? 2 A. Yes, yes. 3 Q. (Continuing.) "Of the ore would 4 significantly reduce these low levels and that, 5 therefore, the beneficiated ore would prove free of 6 any asbestiform minerals." 7 So they're saying, if you float it, we think 8 it will take it out, right? 9 A. Well, that was his opinion in 1974. 10 Q. That was not true, was it? 11 A. No. 12 Q. Okay. "It is concluded that the ore 13 body is of suitable quality for manufacture of 14 high-grade cosmetic and toiletry products," and that 15 is where the baby powder falls, correct? 16 A. It would be if it were ever accepted, 17 yes. 18 Q. Let's look at -- we talked about XRD, 19 right? "In no instance was any asbestos or 20 potentially asbestiform mineral identified by XRD," 21 right? 22 A. That's what is written. 23 Q. We know XRD does not have very low 24 sensitivity, right? 25 A. Yes, down about half percent</p>	<p style="text-align: right;">Page 121</p> <p>1 think is what that word is trying to say -- "these 2 samples, the remaining samples which showed 3 asbestiform in fibers are exhibiting levels which 4 are no higher than has been seen in a raw composite 5 used to manufacture a finished product." 6 Remember that he said, we looked at the 7 Argonaut and we also looked at the ore currently 8 being used, right? 9 A. Yes. 10 Q. And that's Hammondsville, correct? 11 A. Yes. 12 Q. Okay. And they say that "The levels 13 of chrysotile observed in the two high samples is 14 only in order of magnitude above this." 15 So what he's saying is, we saw it in 16 the stuff we're using right now and the stuff we saw 17 in the Argonaut stuff that we're testing is too -- 18 is an order of magnitude higher than what they're 19 currently using, correct? 20 A. You're reading what he wrote. 21 Q. And what I have summarized is 22 accurate, is it not? 23 A. Well, you're reading or you've 24 summarized what he wrote. 25 Q. Okay. He's saying there's chrysotile</p>

<p style="text-align: right;">Page 122</p> <p>1 in the Hammondsville ore body, correct?</p> <p>2 A. Well, he doesn't actually say that.</p> <p>3 He doesn't mention the Hammondsville ore body.</p> <p>4 Q. That's why you're here, sir, is you</p> <p>5 and I have established that as the Hammondsville ore</p> <p>6 body was the then used ore body, correct?</p> <p>7 A. The Hammondsville ore body was the</p> <p>8 then -- was used at that time, yes.</p> <p>9 Q. Right. And he was given a raw</p> <p>10 composite used to make finished product then,</p> <p>11 Hammondsville, correct?</p> <p>12 A. He was given a raw composite. It</p> <p>13 doesn't say it was Hammondsville, but it could have</p> <p>14 been.</p> <p>15 Q. Sir, I don't want to go around in</p> <p>16 circles with you.</p> <p>17 A. Yeah, like I say.</p> <p>18 Q. Go back to the beginning and I'll</p> <p>19 show you if you want to see it.</p> <p>20 For comparison three core samples</p> <p>21 from the current ore body were also examined, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. We know that's Hammondsville,</p> <p>24 right?</p> <p>25 A. It should have been, yes, yes.</p>	<p style="text-align: right;">Page 124</p> <p>1 that even prior to beneficiation this material is of</p> <p>2 extremely high grade substantially asbestos free."</p> <p>3 By the way, we're back to</p> <p>4 "substantially."</p> <p>5 MS. SULLIVAN: Can we read it first,</p> <p>6 Counsel?</p> <p>7 MR. PANATIER: Your Honor, I can --</p> <p>8 THE COURT: Stop interrupting,</p> <p>9 Counsel, he is reading it.</p> <p>10 Continue.</p> <p>11 MR. PANATIER: I'm going to stop here</p> <p>12 and I will read the rest but I'm going ask a</p> <p>13 question.</p> <p>14 BY MR. PANATIER:</p> <p>15 Q. "Substantially asbestos free,"</p> <p>16 doesn't mean "asbestos free," does it?</p> <p>17 A. Again, we're going to that argument</p> <p>18 as to what "substantially" means. And, you know, I</p> <p>19 can speculate. But it reads what it reads</p> <p>20 "substantially asbestos free."</p> <p>21 Q. I don't want to you speculate.</p> <p>22 A. Thank you.</p> <p>23 Q. I just want you to -- I just want you</p> <p>24 to -- let's talk commonsense, okay? Does</p> <p>25 "substantially asbestos free" mean "asbestos free,"</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. Okay. And what he says is that the</p> <p>2 chrysotile that they found in the ore body that they</p> <p>3 were looking to qualify had more chrysotile than the</p> <p>4 current ore, correct?</p> <p>5 A. Well, that's what he's written.</p> <p>6 Q. Okay. Right, that's all I'm asking</p> <p>7 you, is did he write that?</p> <p>8 A. Yeah, he's written that as part of</p> <p>9 this review to whether or not to use the --</p> <p>10 Q. Right.</p> <p>11 A. -- Argonaut mines.</p> <p>12 MS. SULLIVAN: Counsel, can you read</p> <p>13 the conclusion.</p> <p>14 MR. PANATIER: Sure.</p> <p>15 Q. It's already been stated but he says,</p> <p>16 The level of chrysotile -- "The levels of</p> <p>17 chrysotile" --</p> <p>18 MS. SULLIVAN: The paragraph,</p> <p>19 Counsel.</p> <p>20 MR. PANATIER: You want me to read</p> <p>21 the bottom paragraph, okay.</p> <p>22 Q. "The examine of 41 core samples, 38</p> <p>23 of them from a new talc ore body using the</p> <p>24 techniques of X-ray diffraction, electron microscopy</p> <p>25 and selected area electron refraction have shown</p>	<p style="text-align: right;">Page 125</p> <p>1 sir?</p> <p>2 A. I don't know the context on how this</p> <p>3 person thought. What he stated is what he stated.</p> <p>4 Q. He already said he found asbestos.</p> <p>5 A. What he reads --</p> <p>6 Q. Did he say he found asbestos?</p> <p>7 MS. SULLIVAN: Your Honor, I'm just</p> <p>8 going to object. The Court instructed him to read</p> <p>9 the conclusion for completeness and he's not doing</p> <p>10 that.</p> <p>11 THE COURT: Overruled. He is.</p> <p>12 Q. Does it say he found asbestos, Dr.</p> <p>13 Hopkins?</p> <p>14 A. In the -- in the summary or the</p> <p>15 conclusions?</p> <p>16 Q. In the summary.</p> <p>17 A. What he reads -- what he writes --</p> <p>18 MR. PANATIER: I'm going to object to</p> <p>19 nonresponsive.</p> <p>20 A. He doesn't say he found asbestos.</p> <p>21 Q. He doesn't say he found asbestos? It</p> <p>22 literally says he found chrysotile asbestos in 15</p> <p>23 samples, doesn't it?</p> <p>24 A. That's what -- I thought you were</p> <p>25 going to read that in the next sentence. In only</p>

<p style="text-align: right;">Page 126</p> <p>1 two samples --</p> <p>2 Q. Wait, wait.</p> <p>3 MR. PANATIER: Okay. Your Honor, I</p> <p>4 have to object to nonresponsive and move to strike.</p> <p>5 MS. SULLIVAN: Objection, your Honor.</p> <p>6 He's arguing with -- Counsel is arguing with the</p> <p>7 witness.</p> <p>8 THE COURT: Objection overruled.</p> <p>9 Please listen to the question before</p> <p>10 you begin to answer and answer only the question</p> <p>11 being asked.</p> <p>12 One more time.</p> <p>13 BY MR. PANATIER:</p> <p>14 Q. Did they find asbestos in 15 samples?</p> <p>15 A. The claimed to. He reported. In</p> <p>16 those core samples, drill samples, that's what he</p> <p>17 reported.</p> <p>18 Q. And then down here when he describes</p> <p>19 it as, "substantially asbestos free," that does not</p> <p>20 mean "asbestos free," can we agree on that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And he says that, "And of a</p> <p>23 quality which we associate with cosmetic-grade talc.</p> <p>24 In only two samples was a level of chrysotile</p> <p>25 observed which was higher than .0005. Chrysotile</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. By the way, since he also said that</p> <p>2 he found chrysotile in the then current ore body,</p> <p>3 did that information go to the FDA?</p> <p>4 A. I don't know.</p> <p>5 Q. Okay. Let's go to November 10th.</p> <p>6 This is -- actually, it's dated November 6th, but</p> <p>7 your tab says November 10, 1974, because that's when</p> <p>8 the document is signed. This is Exhibit 2321. So</p> <p>9 November 10, 1974. Do you have that, sir?</p> <p>10 A. Yes.</p> <p>11 Q. Alright. And this is one of our FDA</p> <p>12 FOIA documents. This is not a great copy, as we've</p> <p>13 seen from some of the FDA documents. But this a --</p> <p>14 can you see it's a memorandum of a meeting</p> <p>15 November 6th, 1974?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay.</p> <p>18 A. Yes.</p> <p>19 Q. And it says, "Between FDA</p> <p>20 representatives" -- and it has a list -- "and</p> <p>21 representatives of J&J," right?</p> <p>22 A. Yes.</p> <p>23 Q. Subject is "General discussion of the</p> <p>24 talc/asbestos problem," right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 127</p> <p>1 levels of this order of magnitude might well arise</p> <p>2 during taking and handling of samples," right?</p> <p>3 A. That's exactly what is written, yes.</p> <p>4 Q. Now, if we actually look at the</p> <p>5 results, there's XRD in Table 1. And no positives.</p> <p>6 There is one questionable for chrysotile, right?</p> <p>7 A. Yes.</p> <p>8 Q. But when we go to transmission</p> <p>9 electron microscopy, we have both chrysotile and</p> <p>10 amphibole in 15 samples, right?</p> <p>11 A. Yes, on the core drill samples, yes.</p> <p>12 Q. Okay. Before this time Johnson &</p> <p>13 Johnson had represented to the FDA that they had</p> <p>14 never found chrysotile in any of their ores,</p> <p>15 correct?</p> <p>16 A. Not in the -- not in the ores used to</p> <p>17 make the powder, this ore body evaluation.</p> <p>18 MR. PANATIER: Objection</p> <p>19 nonresponsive, your Honor.</p> <p>20 A. Okay. Not in the ores used to make</p> <p>21 the powder, period.</p> <p>22 Q. Okay. And when they got this report,</p> <p>23 when they started using the ore body, okay, in the</p> <p>24 '90s, did this go to the FDA, that's the question?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 129</p> <p>1 MR PANATIER: Okay. Your Honor, we</p> <p>2 offer Exhibit 2321 into evidence.</p> <p>3 MS. SULLIVAN: No objection.</p> <p>4 THE COURT: Admitted.</p> <p>5 (Plaintiff's Exhibit 2321 was moved</p> <p>6 into evidence.)</p> <p>7 BY MR. PANATIER:</p> <p>8 Q. We're going to try to make this out</p> <p>9 as best we can. This is what I'm -- what I want to</p> <p>10 discuss right here. Following introductions, "Dr.</p> <p>11 Nashed had stated that their statistical group had</p> <p>12 made an estimation of a theoretical safe level of</p> <p>13 asbestos fiber in a baby talc utilizing the official</p> <p>14 TLV for asbestos and the data obtained from their</p> <p>15 experiment on dusting of baby powder." So I'll stop</p> <p>16 there.</p> <p>17 Again, Johnson & Johnson has said publically</p> <p>18 and said here in this courtroom yesterday there is</p> <p>19 no known safe level of asbestos exposure, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. He further stated that</p> <p>22 "Johnson & Johnson had examined many cosmetic talc</p> <p>23 samples and had not detected chrysotile at any</p> <p>24 level," right?</p> <p>25 A. You read what is written.</p>

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1 Q. Okay. That comes about seven months
2 after April where they analyzed the core samples,
3 right?
4 A. In the mine that they were beginning
5 to look at, yes.
6 Q. That's right.
7 A. Yes.
8 Q. Correct? On the back -- we'll it's
9 here. "He wondered, therefore" -- this is Dr.
10 Nashed -- "if a health hazard does exist involving
11 the presence of chrysotile in cosmetic talcs since
12 their calculation showed that a substantial safety
13 factor can be expected with talc containing
14 1 percent by weight asbestos particles," right?
15 A. You read what is written.
16 Q. Okay. So, again, this is not zero
17 tolerance, correct?
18 A. No, this is a response to a request
19 from FDA.
20 Q. Okay.
21 A. And you read what they wrote when
22 they responded to FDA.
23 Q. Dr. Eiermann indicated that, "The
24 division of cosmetics technology had carried out a
25 simulated baby dusting experiment and the results

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1 seem to differ from the results of Johnson & Johnson
2 by one order of magnitude."
3 Now, an order of magnitude is tenfold,
4 correct?
5 A. Yes.
6 Q. Okay. That's it. Let's look at
7 July 16, 1976. Have you found that?
8 A. Yes, yes.
9 Q. Johnson & Johnson memo, July 16,
10 1976, Plaintiff's Exhibit 2601. That's from Alan
11 Marks, right?
12 A. Yes.
13 MR. PANATIER: We'll offer this into
14 evidence, your Honor.
15 MS. SULLIVAN: No objection, your
16 Honor.
17 THE COURT: Admitted.
18 (Plaintiff's Exhibit 2601 was moved
19 into evidence.)
20 BY MR. PANATIER:
21 Q. Now, this is a discussion of the
22 Argonaut mine evaluation, correct?
23 A. Yes.
24 Q. "Processed talc produced from the
25 Argonaut mineral of Windsor Minerals, Inc., has been

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1 shown to be suitable for the production of Johnson's
2 Baby Powder." So this is July.
3 That's two years and three months after the
4 74 core sample report, right?
5 A. Yes.
6 Q. And they are proving it, right?
7 A. They are proving the areas that were
8 clean, yes.
9 Q. Oh, I'm sorry, does it say that?
10 A. Put it the other way around, you
11 would not approve areas.
12 MR. PANATIER: I'm going to object as
13 nonresponsive, your Honor.
14 A. No, it does not say that. It does
15 not say that, no.
16 Q. It doesn't say we're only approving
17 the clean areas, right?
18 A. It doesn't that on here, no.
19 Q. And by the way, when McCrone went out
20 and did the core samples, the core sample
21 representation represented areas of the entire ore
22 body, right?
23 A. They went over several acres, yes.
24 Q. If you go to the next page, they talk
25 about McCrone's report from '74, right?

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1 A. Yes.
2 Q. And it says, "Walter C. McCrone &
3 Associates evaluated 38 ore samples from the
4 Argonaut ore body and found no difference in the
5 qualitative and quantitative presence of asbestiform
6 minerals compared to three samples from
7 Hammondsville ore body," right?
8 A. That's what is written.
9 Q. So remember how I asked you? I said,
10 well, the then current ore being used was
11 Hammondsville, right?
12 A. Yes.
13 Q. Well, now we know for sure that's
14 correct, isn't it?
15 A. That is correct, yes.
16 Q. And they say that it didn't differ in
17 quantity or quality of the asbestiform minerals
18 present, right?
19 A. You read what was written.
20 Q. Right. So we had the levels that
21 were found and we had the quantity, 15 of 38 that
22 were found, right?
23 A. Yes.
24 Q. Okay. And they're saying it's
25 virtually the same as Hammondsville, right?

<p style="text-align: right;">Page 134</p> <p>1 A. Well, obviously, they were taking it 2 from the areas that were asbestos free to meet that. 3 Q. I'm so sorry, where does it say that? 4 A. You know, it doesn't say that. 5 Q. It doesn't, alright. 6 A. I'm happy to give that information 7 and explanation later. 8 Q. Okay. Alright. You can set that 9 aside, sir, or are you ready to turn to the next 10 page. 11 This will be 9 May 1974. So it's 12 Exhibit 2525. So May 9th, 1974. If you would turn 13 to that, sir. 14 You found that? 15 A. Yes. 16 Q. Okay. And by the way, what McCrone 17 said in their 1974 survey was that the talc they'd 18 sampled, all of it, was suitable for use in the 19 cosmetic products, correct? 20 A. Did they state that, specifically, 21 or -- for every one of those core samples? 22 Q. The sample was of the Argonaut ore 23 body, right? 24 A. The ore body, yes. 25 Q. It says, "It has concluded the ore</p>	<p style="text-align: right;">Page 136</p> <p>1 A. Yes. You're reading what they wrote. 2 Q. Of course, it's not free of 3 asbestiform minerals, is it? 4 A. Certain areas would be avoided. 5 Q. Right. But look, it's interesting 6 what they say in their conclusion. This is McCrone 7 again, is it not? 8 A. It's McCrone -- it's a McCrone 9 memorandum, yes. 10 Q. Yes. They say, "Based on it's 11 freedom from asbestiform minerals," and they're 12 talking about the whole ore body? 13 A. They talk about the whole ore body, 14 yes. 15 Q. But it's not free of asbestiform 16 minerals? 17 A. No, there are areas that you would 18 not use. 19 Q. Does it say that? 20 A. That's just the way that the miners 21 and the geologists work. 22 MR. PANATIER: Objection. 23 Nonresponsive, your Honor. 24 A. It does not say that, no, it does 25 not.</p>
<p style="text-align: right;">Page 135</p> <p>1 body is of suitable quality for the manufacture of 2 high-grade cosmetic and toiletry products," correct? 3 A. That's what they wrote. 4 Q. They didn't say "the clean part," 5 right? 6 A. They didn't say that. 7 Q. They didn't say the "south part" or 8 the "east part, did they? 9 A. They didn't say that, no. 10 MS. SULLIVAN: Your Honor, in the 11 interest of completeness, I ask that Counsel read 12 the back page that he hasn't shown the witness. 13 MR. PANATIER: What page? 14 MS. SULLIVAN: The back page. 15 MR. PANATIER: Okay. 16 BY MR. PANATIER: 17 Q. "It is our conclusion based on the 18 platyness of the material and its freedom from 19 asbestiform minerals that the ore body would be 20 suitable for use in high-quality cosmetic toiletry 21 products." Isn't that what we just said? 22 A. Yes, it's free from asbestiform 23 minerals. You're reading what they wrote. 24 Q. Wait, hold it, hold it. 25 That's what we just said, right?</p>	<p style="text-align: right;">Page 137</p> <p>1 MR. PANATIER: Move to strike. 2 THE COURT: That part of the response 3 that was not in direct response to the question is 4 stricken. The last sentence is responsive. 5 BY MR. PANATIER: 6 Q. Okay. So you have -- have you found 7 the May 9, 1974 document? 8 A. Yes. 9 Q. Okay. This is another report of talc 10 ores and products from the Argonaut ore body from 11 McCrone, right? 12 A. It is, yes. 13 MR. PANATIER: Okay. We offer this 14 into evidence, 2525. 15 MS. SULLIVAN: No objection. 16 THE COURT: Admitted. 17 (Plaintiff's Exhibit 2525 was moved 18 into evidence.) 19 BY MR. PANATIER: 20 Q. They looked at six samples, right? 21 A. Yes. 22 Q. And they marked them "ore" and 23 "product," meaning one is ore coming into the 24 beneficiation process, one is the product coming out 25 of it; is that right?</p>

<p style="text-align: right;">Page 138</p> <p>1 A. Yes.</p> <p>2 Q. Let's just look at some of the</p> <p>3 results. In 6/6/14 ore they say that they found</p> <p>4 nine small chrysotile fibers, right?</p> <p>5 A. Yes.</p> <p>6 Q. They didn't find any asbestiform</p> <p>7 amphiboles, just chrysotile, true?</p> <p>8 A. You read what is reported.</p> <p>9 Q. Now, well, here, let's look at the</p> <p>10 next one, "product." You see where it says,</p> <p>11 "electron microscopical examination showed three</p> <p>12 fibers which bore an exact resemblance to chrysotile</p> <p>13 but no conclusive electron diffraction pattern could</p> <p>14 be obtained. In addition, three other small</p> <p>15 chrysotile fibers were found which did give</p> <p>16 diffraction patterns, no amphiboles," right?</p> <p>17 A. Yes.</p> <p>18 Q. They found chrysotile asbestos in the</p> <p>19 product of the beneficiation process, right?</p> <p>20 A. From -- yes, yeah.</p> <p>21 Q. Alright. So, after it's floated,</p> <p>22 after it's beneficiated, they still found asbestos,</p> <p>23 right?</p> <p>24 A. Yes. And we've said that</p> <p>25 beneficiation will not remove --</p>	<p style="text-align: right;">Page 140</p> <p>1 nonresponsive. I move to strike.</p> <p>2 A. I said I don't know.</p> <p>3 THE COURT: Everything short of "I</p> <p>4 don't know" has been stricken from the record.</p> <p>5 Q. The next document will be</p> <p>6 September 6th, 1974.</p> <p>7 THE COURT: What was the date,</p> <p>8 Counsel?</p> <p>9 MR. PANATIER: September 6th, 1974</p> <p>10 and the Exhibit No. is 2536.</p> <p>11 BY MR. PANATIER:</p> <p>12 Q. Let me know once you've located that,</p> <p>13 Dr. Hopkins.</p> <p>14 A. Yeah, we have it.</p> <p>15 Q. You got it?</p> <p>16 A. Yes.</p> <p>17 Q. This is a letter to the FDA from</p> <p>18 Johnson & Johnson, right?</p> <p>19 A. Yes.</p> <p>20 MR. PANATIER: We offer this into</p> <p>21 evidence.</p> <p>22 MS. SULLIVAN: No objection.</p> <p>23 THE COURT: Admitted.</p> <p>24 (Plaintiff's Exhibit 2536 was moved</p> <p>25 into evidence.)</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Right.</p> <p>2 A. -- asbestiforms.</p> <p>3 Q. And J&J's always known that, right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Here it says, "The results of</p> <p>6 extensive light and electron microscopical</p> <p>7 examination of three Argonaut talc core samples and</p> <p>8 three product samples produced from these ores so</p> <p>9 that the Argonaut ore body, in general, produces a</p> <p>10 good quality platy talc with low content of rolltop</p> <p>11 fibers. Only ARX66-14 ore and product showed any</p> <p>12 evidence of asbestos contamination."</p> <p>13 They're put unequivocal there, right, that's</p> <p>14 asbestos, right?</p> <p>15 A. That's what is written.</p> <p>16 Q. "Which is estimated at less than 1 to</p> <p>17 2 parts per million for the ore and less than one</p> <p>18 half to one part per million for the resulting</p> <p>19 product," right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Did this go to the FDA?</p> <p>22 A. I don't know. I mean, this was never</p> <p>23 used at that time as a cosmetic product. It was an</p> <p>24 industrial product.</p> <p>25 MR. PANATIER: Objection, your Honor,</p>	<p style="text-align: right;">Page 141</p> <p>1 BY MR. PANATIER:</p> <p>2 Q. September 6th, 1974. They say to Dr.</p> <p>3 Schaffner, they've done another calculation. It</p> <p>4 says, "The calculation shows that a substantial</p> <p>5 safety factor can be expected with talc containing</p> <p>6 1 percent by weight asbestos fibers," right?</p> <p>7 A. That was their response.</p> <p>8 Q. "WW" by the way, that just means</p> <p>9 "weight for weight," right?</p> <p>10 A. Yes.</p> <p>11 Q. "Therefore, methods capable of</p> <p>12 determining less than 1 percent in talc are not</p> <p>13 necessary to assure the safety in cosmetic talc,"</p> <p>14 right?</p> <p>15 A. That was their opinion in 1974.</p> <p>16 Q. So what they're saying is, if methods</p> <p>17 are going to be developed, we don't need anything</p> <p>18 that goes below 1 percent, right?</p> <p>19 A. Well, that was the opinion in 1974.</p> <p>20 Q. But Johnson & Johnson knew if certain</p> <p>21 methods were used such as TEM, that asbestiforms,</p> <p>22 chrysotile or amphiboles could be found but at less</p> <p>23 than 1 percent, right?</p> <p>24 A. Yes. And J&J were using TEM.</p> <p>25 Q. So Johnson & Johnson knew that if you</p>

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1 looked down to a smaller percentage, you could see
2 it, right, by TEM?
3 A. Yeah, they've been using TEM since
4 '72.
5 MR. PANATIER: Objection,
6 nonresponsive, your Honor.
7 A. Yes.
8 THE COURT: The objection is
9 sustained.
10 A. Your answer is, yes.
11 THE COURT: Dr. Hopkins, could I
12 please ask that you answer only the question being
13 asked. Counsel for Johnson & Johnson will have an
14 opportunity to ask questions later.
15 THE WITNESS: My apologies, your
16 Honor.
17 THE COURT: Thank you.
18 BY MR. PANATIER:
19 Q. Yet the same year, 1974, they're
20 telling the FDA, we only need a method that goes --
21 I'm sorry.
22 (There is a discussion off the
23 record.)
24 Q. They're telling the FDA, we only need
25 a method that goes down to 1 percent; is that true?

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1 A. That was what was written in 1974.
2 Q. So that's to the FDA. So that goes
3 in the outbox.
4 Let's look at July 1st, 1975. You
5 know that McCrone was finding asbestos in the
6 Hammondsville ore body in 1975, do you not?
7 A. I don't know. I'd need to refresh my
8 mind on that one.
9 Q. Okay. Well, look at July 1st, 1975,
10 please. That's already in evidence and it's
11 Exhibit 2053.
12 Have you found July 5th, 1975?
13 A. Yes, yes, yes.
14 Q. I've shown you that document, at
15 least, two or three times before, have I not?
16 A. July 1st, 1975?
17 Q. July 1st.
18 A. Yes, I have that.
19 Q. 1975.
20 A. Yeah.
21 MR. PANATIER: We offer this in
22 evidence.
23 MS. SULLIVAN: No objection.
24 MR. PANATIER: It's 2053. It might
25 already been.

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1 MS. SULLIVAN: It's already in
2 evidence.
3 THE COURT: It's already in.
4 BY MR. PANATIER:
5 Q. Okay. So here's the -- here's the
6 document. We've already established that at this
7 time only Hammondsville is the only cosmetic ore
8 body, correct?
9 A. The only cosmetic ore body.
10 Q. Right.
11 A. Yes.
12 Q. Right.
13 A. Yes.
14 Q. And they're looking at 29 talc
15 samples, right?
16 A. Yes.
17 Q. And they found asbestos in them,
18 right?
19 A. Yes.
20 Q. Oh, by the way, we haven't seen this
21 fella's name yet, Vern Zeitz.
22 He was R&D director at Windsor Minerals,
23 right?
24 A. Yes.
25 Q. And I didn't put him on my list here

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1 because he didn't fit and he was "Z." So let's add
2 him. Let's add him by Miller because he was at
3 Windsor Minerals. So we're going to put "Zeitz,
4 head of R&D."
5 Okay. They found confirmed asbestos
6 in a number of these samples, right?
7 A. In the samples that were reported,
8 yes.
9 Q. Right. And let's just focus on HC.
10 Okay. So they found 1, 2, 3, 4, 5 results
11 for confirmed asbestos in the HC, correct?
12 A. Yes.
13 Q. And that's in the fines, right?
14 A. Yes.
15 Q. Because what they did here is they
16 actually did a separation technique, right, where
17 they put the powder into a test tube and they
18 sonicated it, right, which we talked about
19 yesterday, which separated out the fines from the
20 sediment, right?
21 A. Yes.
22 Q. That's a bit -- that's sort of like a
23 concentration technique, you can concentrate one
24 fraction away from another, right?
25 A. Yeah, a bit like centrifuging, yes.

<p style="text-align: right;">Page 146</p> <p>1 Q. Yeah. If then you go to the next 2 page, they have the sediment. And for HC one, two 3 -- two of those are the HC, right, in the sediment? 4 A. Two of those are at HC. 5 Q. So they were able to -- I think it 6 says right here on the front page, they say, "In 7 examining the samples, we kept a running tabulation 8 of the asbestos which we could positively identify 9 the total fiber content in the organic material 10 present in each sample. These are listed 11 qualitatively as zero for none found, low for one to 12 three fibers found, medium for four to eight fibers, 13 high and very high. In no case did the asbestos 14 content exceed medium." 15 My first question here is, did this 16 go to the FDA? 17 A. I don't know. 18 Q. Have you seen any evidence that it 19 actually did? 20 A. I've not seen evidence that it did or 21 that it did not. So my answer is the same. I don't 22 know. 23 Q. Now, there was a followup report on 24 this one in November. So if you'll turn to November 25 5th, 1975. This is also in evidence, November 5th,</p>	<p style="text-align: right;">Page 148</p> <p>1 where they say that when they suspend the fines it's 2 more sensitive to the presence of amphibole than 3 looking in the sediment, right? 4 A. Yeah, you're reading what is written. 5 Q. So they had a way to sort of separate 6 out the different particles, fines versus sediment, 7 and they had a more sensitive way to look for the 8 asbestos, right? 9 A. That is the impression we get, yes. 10 Q. Do you know that they ever did this 11 again? 12 A. McCrone? 13 Q. Yeah, that they ever did this type of 14 technique to look for the asbestos after November of 15 1975? 16 A. I don't know. 17 Q. Okay. 18 A. Don't know. 19 Q. And on the back, fibers of asbestos 20 we've got HC. Let's look at HC 1, 2, 3, 4, right? 21 A. Yes. 22 Q. And that's in the fines. And then 23 five, looks like five, right, a total if you include 24 the sediment, right? 25 A. Yes.</p>
<p style="text-align: right;">Page 147</p> <p>1 1975. 2 "This letter will supplement our 3 report of July 1st on a series of talc or samples 4 which we've analyzed for you. Table 1 shows the 5 actual fiber counts and the approximate equivalent 6 concentration in parts per million of the amphibole 7 particles which we found in these samples." 8 So these were amphibole asbestos they found, 9 correct? 10 A. They're described as amphiboles, yes. 11 Q. Right. It was amphibole asbestos 12 they found? 13 A. Well, that was the heading that -- 14 yeah, they've described it under the heading of 15 "fibers of asbestos." 16 Q. Right. 17 A. And described them as amphiboles. 18 Q. By the way, it doesn't say "fibrous 19 asbestos," it says "fibers of asbestos," right? 20 A. That is what is written. 21 Q. They said some of them seemed rather 22 high, one at 10 and one had 9 amphiboles. Most of 23 these come in bundles of 1, 2 or 3 fibers with 24 anywhere from 2 to 5 amphiboles in a bundle. 25 And here they're describing their suspension</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. And the highest result was this one 2 that had ten and that was marked HC? 3 A. Yes. 4 Q. Okay. "HC" you know is Hammondsville 5 Cosmetic, correct? 6 A. No. 7 Q. It's not, okay. So help me out then 8 so we can figure out what it means. I'll put it in 9 green. "HC," so I say it means "Hammondsville 10 Cosmetic" but you're the company, you tell me what 11 it is means. What does that stand for? 12 A. The designation HC -- 13 Q. Uh-huh, right, I'm ready. 14 A. -- is applied to both industrial 15 talcs and to cosmetic talcs. 16 Q. Well, I'm asking what it stands for. 17 What does "HC" stand for? 18 A. I've never ever seen a key or a 19 breakdown as to what "HC" stands for. 20 Q. Okay. This is already in evidence as 21 Exhibit 2840 and I've shown you this before. 22 January 14, 1975. Do you see that? 23 A. Yes. 24 Q. The samples represented both the 25 industrial materials produced at Gassetts, GI, the</p>

<p style="text-align: right;">Page 150</p> <p>1 West Windsor, WI, mill sites and the ores used in 2 the cosmetic production "HC," right? 3 A. That's what I said a minute ago. HC 4 can mean cosmetic ores, but it's, also, a 5 designation for industrial talcs. 6 Q. Well, for this they're saying it's 7 the cosmetic talc, right, they're not saying it's 8 industrial, are they? 9 A. On that particular memo. 10 Q. Yes. 11 A. That's what they said. On that day 12 they shipped that product and that was the 13 designation they used on that day. 14 Q. Oh, okay. So they would have only 15 used it on that day. Let's just be clear. Look, 16 this was for six months of work. 17 A. Okay. Okay. 18 Q. They said HC was the cosmetic 19 production, right? 20 A. On that -- on that particular memo, 21 yes, on that -- written on that day. 22 Q. Fine. This next document is dated 23 May 24, 1976, if you'll turn to that. It just says 24 '76. So I'll help you find it. Because it will be 25 near the front. Here it is.</p>	<p style="text-align: right;">Page 152</p> <p>1 quick answer." We know that's true. "I've just now 2 received the answer to your request of March 26, 3 1976. You are hereby granted permission to disclose 4 data resulting from your tests on our samples. The 5 samples which are relevant to the production and 6 sale of cosmetic talcs in the US and Canadian 7 markets are those bearing the letters HC as part of 8 their prefix," correct? 9 A. Yes, you read what is written. 10 Q. Right. He's not saying one time for 11 one sample, is he? 12 A. On that memo date on May 24, 1976 he 13 is instructing -- 14 MR. PANATIER: I'm going to object to 15 nonresponsive, your Honor. 16 THE COURT: Let him finish the 17 answer. 18 Go ahead, Doctor. 19 THE WITNESS: I'm sorry, I forgot the 20 question. 21 BY MR. PANATIER: 22 Q. Yeah. At that time he is saying that 23 the cosmetic production, the cosmetic talcs, are 24 designated HC, correct? 25 A. Yes, and that's what I was saying.</p>
<p style="text-align: right;">Page 151</p> <p>1 A. Thank you. 2 Q. No problem. Sir, this is a letter 3 from Roger Miller, the president of Windsor 4 Minerals, to McCrone, right? 5 A. Yes. 6 Q. Dated May 24th, '76, true? 7 A. Yes. 8 Q. And you've seen this before? 9 A. Yes. 10 MR. PANATIER: Okay. We offer this 11 into evidence, Plaintiff's Exhibit 3083. 12 MS. SULLIVAN: No objection, your 13 Honor. 14 THE COURT: Admitted. 15 (Plaintiff's Exhibit 3083 was moved 16 into evidence.) 17 BY MR. PANATIER: 18 Q. This is a letter where he writes, 19 Roger Miller now, Windsor Minerals, so he knows what 20 the designation is for the products they use, right? 21 A. Well, yeah, I would hope so. 22 Q. You'd "hope so." He's the president 23 of the mining company, right? 24 A. Yes. 25 Q. He says, "never ask a lawyer for a</p>	<p style="text-align: right;">Page 153</p> <p>1 On that time, that date, that's what he was saying. 2 Q. Well, he doesn't restrict to it to 3 any date, sir, does he? 4 A. Well, I was quoting from the memo 5 which is May 24th. So he's saying on -- he wrote a 6 memo on May 24th saying those results you've got 7 designated HC, those are the ones that you're going 8 to look at. 9 Q. Right. You're testings, right? 10 A. Yes. 11 Q. Your tests? 12 A. Yes. 13 Q. He doesn't say one test at one time. 14 He said if you want the cosmetic tests, it's the 15 ones bearing the letters "HC," right? 16 A. That's what he wrote on May 24th, 17 yes. 18 Q. Do you agree -- can we agree on this 19 -- and I bet we can -- that Hammondsville Cosmetic, 20 if you just take the first letters of each one, 21 that's "HC," can we agree on that? 22 A. Yeah, that's -- that's -- yeah, H and 23 C, yeah. 24 Q. Right, okay. 25 A. But --</p>

<p style="text-align: right;">Page 154</p> <p>1 Q. Well, hold on.</p> <p>2 A. I'll shut up.</p> <p>3 Okay. So now we have the memo from</p> <p>4 1975 that says, "The cosmetic production is HC."</p> <p>5 We have one the next year that is</p> <p>6 unrestricted in time that says, "the cosmetics was</p> <p>7 HC," correct?</p> <p>8 A. We do.</p> <p>9 Q. Okay. This next one is just dated</p> <p>10 1977. And I can help you find that if you need it.</p> <p>11 It should be at the front of the 77s. Yeah, right,</p> <p>12 here. It's probably where it starts. I'm just</p> <p>13 going to let you look at it.</p> <p>14 Okay. So take a look at that. Is</p> <p>15 that dated November 4th, 1977?</p> <p>16 A. It is, yes.</p> <p>17 Q. And that's from Vernon Zeitz to Ian</p> <p>18 Stewart at McCrone?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Thank you.</p> <p>21 MR. PANATIER: We offer this into</p> <p>22 evidence, your Honor, as Exhibit 3121.</p> <p>23 MS. SULLIVAN: No objection.</p> <p>24 THE COURT: I'm sorry, which one is</p> <p>25 it?</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. Right. So you have Gassetts</p> <p>2 Industrial, right?</p> <p>3 A. Yes.</p> <p>4 Q. And then you have Hammondsville</p> <p>5 Cosmetic grade ore "HC," right?</p> <p>6 A. Yes, on that particular memorandum,</p> <p>7 yes.</p> <p>8 Q. Okay. Alright. This next one is --</p> <p>9 it is missing the tag on that one. This one is --</p> <p>10 says 1978. You should only have 1 or 2 tabs that</p> <p>11 just say 1978.</p> <p>12 It might be in Binder 3. Let me help</p> <p>13 you get it. Yeah, here it is. Here you go.</p> <p>14 MR. PANATIER: It's the first</p> <p>15 document, your Honor, in Binder 3.</p> <p>16 THE COURT: Sure.</p> <p>17 BY MR. PANATIER:</p> <p>18 Q. So that's a Windsor Minerals memo,</p> <p>19 correct?</p> <p>20 A. Yes. The answer is yes.</p> <p>21 Q. Sorry?</p> <p>22 A. The answer is yes.</p> <p>23 Q. Starting, "asbestiform mineral</p> <p>24 analysis sampling procedure for Hammondsville</p> <p>25 Cosmetic ore," right?</p>
<p style="text-align: right;">Page 155</p> <p>1 MR. PANATIER: 3121; 1977,</p> <p>2 November 4, 1977. It's this one. It may have been</p> <p>3 left out of the binders.</p> <p>4 THE COURT: Okay, thank you.</p> <p>5 (Plaintiff's Exhibit 3121 was moved</p> <p>6 into evidence.)</p> <p>7 BY MR. PANATIER:</p> <p>8 Q. So we have '74 was our first one.</p> <p>9 '76 was our second one. Now we have '77. "Enclosed</p> <p>10 you will find our next series of samples for</p> <p>11 asbestiform analysis via TEM in conjunction with</p> <p>12 your discussions with Roger Miller."</p> <p>13 And if you look at the back side of it,</p> <p>14 you've got "Columbia Mill" composite, right?</p> <p>15 A. Yes.</p> <p>16 Q. Columbia Mill was industrial, right?</p> <p>17 A. It was one of several, yes.</p> <p>18 Q. Right. So you have "CI," right?</p> <p>19 A. Yes.</p> <p>20 Q. Columbia Industrial, right?</p> <p>21 A. I don't know what it stands for but</p> <p>22 Columbia was one of the industrial mines.</p> <p>23 Q. Gassetts was industrial, right?</p> <p>24 A. It was a milling operation for</p> <p>25 industrial.</p>	<p style="text-align: right;">Page 157</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And you can see they're</p> <p>3 summarizing the sampling?</p> <p>4 A. Yes. Sorry, I said yes.</p> <p>5 MR. PANATIER: By the way, this is</p> <p>6 Exhibit 3224. We offer it, your Honor. Sorry.</p> <p>7 MS. SULLIVAN: No objection.</p> <p>8 THE COURT: Admitted.</p> <p>9 (Plaintiff's Exhibit 3224 was moved</p> <p>10 into evidence.)</p> <p>11 BY MR. PANATIER:</p> <p>12 Q. So they go through the sampling</p> <p>13 procedure and they see under the Hammondsville</p> <p>14 Cosmetic ore they reference 16 HC composite samples,</p> <p>15 right?</p> <p>16 A. They do, yes.</p> <p>17 Q. Right? And then they have a separate</p> <p>18 section for industrial grade talcs, correct?</p> <p>19 A. They do in that memo, yes.</p> <p>20 Q. Okay. So now we've seen '78, '77,</p> <p>21 '76, '75 where Hammondsville Cosmetic is "HC,"</p> <p>22 right, every single time, right?</p> <p>23 A. On those memos, yes.</p> <p>24 Q. Now, that is not to say that they</p> <p>25 didn't also mine the Hammondsville -- I'm going to</p>

<p style="text-align: right;">Page 158</p> <p>1 draw a mine real fast, okay. 2 So here's the Hammondsville mine, okay, 3 Hammondsville. They mine the cosmetic talc out of 4 Hammondsville, correct? 5 A. Yes. 6 Q. That's not to say that they didn't 7 also pull some out and sell it as roofing talc, 8 correct? 9 A. Yes. 10 Q. They did that, right? 11 A. Yes. And they occasionally, if I 12 may, mix it with material from the other mines, the 13 Columbia mine and the Clifton mine. 14 Q. Well, we'll, get into that. The 15 Clifton mine wasn't in operation in 1975, was it? 16 A. I believe it was. It was a short 17 period when it was shut down. But there were other 18 mines, the Chester mine and the Blackbear. 19 Q. I was asking you about Clifton. 20 A. Clifton. There was a short period it 21 was shut down. 22 Q. Okay. So roofing talc, right? 23 A. Yes. 24 Q. You call that industrial? 25 A. It is, yes.</p>	<p style="text-align: right;">Page 160</p> <p>1 THE COURT: That's okay. Don't worry 2 about it. 3 BY MR. PANATIER: 4 Q. Okay. So I'll just show -- you see 5 that this is a FDA response to a FOIA request? 6 Right there? 7 MS. SULLIVAN: It looks like it's -- 8 (INAUDIBLE.) 9 THE COURT: I'm sorry, is that an 10 objection? 11 MS. SULLIVAN: No, your Honor, it's 12 just it looks like it's not FDA but another 13 government. 14 MR. PANATIER: Oh, I'm sorry, that's 15 absolutely correct, it's -- 16 THE WITNESS: US Department of Labor. 17 BY MR. PANATIER: 18 Q. US Department of Labor, right? 19 A. Yeah. 20 Q. I'm sorry. We're so used to the FDA 21 here. 22 MR. PANATIER: Your Honor, I'm just 23 going to offer this into evidence. 24 MS. SULLIVAN: No objection. 25 THE COURT: Admitted.</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Right? 2 But if it was roofing talc from 3 Hammondsville, it was coming from the same place the 4 cosmetic was coming from, from Hammondsville, 5 correct? True? 6 A. From the same mine, yes. 7 Q. Yes. 8 A. Yes, yes, yes. 9 (There is a discussion off the 10 record.) 11 MR. PANATIER: We're going to put the 12 November 5, '75 confirmed asbestos and the July 1st, 13 '75 fibers of asbestos in the inbox. 14 MS. SULLIVAN: Objection, lacks 15 foundation. 16 MR. PANATIER: I was asked yesterday 17 to state where they were going. That's all I'm 18 doing. 19 THE COURT: Objection overruled. 20 MR. PANATIER: Okay. 21 (There is a discussion off the 22 record.) 23 MR. PANATIER: Alright, this will be 24 Exhibit 3051. Your Honor, I don't think I have 25 another copy of it.</p>	<p style="text-align: right;">Page 161</p> <p>1 (Plaintiff's Exhibit 3051 was moved 2 into evidence.) 3 Q. So we've got the cover sheet where we 4 get the documents from the Department of Labor. And 5 there's only one part I'm interested on in this. 6 Do you see that it says it looks at some 7 mining companies and one of those is -- it says, 8 "Johnson & Johnson Division Windsor Minerals, Inc.," 9 right? 10 A. Yes. 11 Q. And it says, "number of employees." 12 It says, "Argonaut, Frost Bite, Gassetts Mill, 13 Hammondsville Mine, West Windsor Mill," right? 14 A. Yes. 15 Q. And it doesn't list any employees for 16 Clifton, does it? 17 A. On what date was that? 18 Q. Right down here if you look. "We 19 already gave this info to Dr. Peters 6/11/74," 20 correct? 21 A. It doesn't list them, no, no. 22 Q. So the mine is not running if it 23 doesn't have employees, right? 24 A. I did say it was closed for a short 25 period.</p>

<p style="text-align: right;">Page 162</p> <p>1 Q. Correct, okay. 2 (There is a discussion off the 3 record.) 4 Q. This will be Exhibit 2581. And this 5 is dated November 15th [sic], 1975, sir. This is 6 probably going to be in your second binder. 7 A. November the? 8 Q. The 19th. 9 A. The 19th. That's it. Got it. 10 Q. Okay, great. 11 This is another memo from McCrone to 12 Windsor Minerals, right? 13 A. It is, yes. 14 MR. PANATIER: Okay. We offer this 15 into evidence, 2581, your Honor. 16 MS. SULLIVAN: No objection. 17 THE COURT: Admitted. 18 (Plaintiff's Exhibit 2581 was moved 19 into evidence.) 20 BY MR. PANATIER: 21 Q. This is just another testing result, 22 correct, where they looked at 24 talc ore samples, 23 right? 24 A. Yes. 25 Q. Dated 9/2/75, for asbestiform</p>	<p style="text-align: right;">Page 164</p> <p>1 A. I don't know what this individual 2 wrote in 1975. He wrote what he wrote, you know. 3 I'm not going to argue over it, so... 4 Q. Well, because you told me like when I 5 put up Johnson & Johnson's definitions, you say, oh, 6 no, it has to say it's asbestiform. Well, they're 7 saying it here. Is it asbestos? 8 A. He says "asbestiform." 9 Q. Is it asbestos? 10 A. That would be my interpretation. 11 Q. Did this go to the FDA? 12 A. I don't know. I don't know what 13 these talcs were. 14 Q. Well it says "HC," right? 15 A. It says "HC," yes. 16 Q. And we know that there are some memos 17 you've shown me and that we've gone through, where 18 they reference "HC" as roofing talc, right, that we 19 know is taken out of Hammondsville Cosmetic, 20 correct? 21 A. "HC" can mean industrial talcs. 22 Q. Right, the roofing talcs were 23 industrial, correct? 24 A. They were, yes. 25 Q. Okay, alright. Let's do -- let's go</p>
<p style="text-align: right;">Page 163</p> <p>1 minerals, right? 2 A. Yes. 3 Q. They say, "In the entire series, we 4 found only two asbestiform fibers, both amphiboles. 5 One in sample N1 HC of a size equivalent to a 6 concentration of, approximately, .1 parts per 7 million and one at sample 01 HC equivalent to, 8 approximately, .3 parts per million," correct? 9 A. Yes. 10 Q. Okay. So, again, these are two more 11 results for asbestiform, as they call it, which is 12 asbestos, by the way, right? 13 A. I wouldn't disagree with what we have 14 there. It doesn't say "asbestos." 15 Q. If it says -- sorry. 16 A. We can only read what it says. 17 Q. Just to be clear, Johnson & Johnson 18 agrees, if it says asbestiform, it's asbestos, 19 right? 20 A. That would be the -- that would be 21 the approach today, yes. I don't know what they 22 meant in 1975. But that would be the approach 23 today. I would agree today if I read that. 24 Q. So are you saying you don't know what 25 that was in --</p>	<p style="text-align: right;">Page 165</p> <p>1 to December and skip that one. Go to December 15. 2 December 15, 1977, please sir. 3 (There is a discussion off the 4 record.) 5 Q. Alright. Sir, have you found 6 December 15, 1977? 7 A. Yes. 8 Q. Is that a document from the -- well, 9 does it look like this? Yeah. 10 A. Yeah. 11 Q. That's it. 12 This is a document from Mountain 13 States Research and Development in Tucson, Arizona 14 dated December 15, 1977 with the Johnson & Johnson 15 Bates Stamp on it, correct? 16 A. Yes. 17 MR. PANATIER: Okay. We offer this 18 into evidence, your Honor. 19 MS. SULLIVAN: No objection. 20 THE COURT: Admitted. 21 (Plaintiff's Exhibit 2669 was moved 22 into evidence.) 23 Q. It says -- 24 THE COURT: What is the marking on 25 the document?</p>

<p style="text-align: right;">Page 166</p> <p>1 MR. PANATIER: Sorry. 2669, your 2 Honor, Exhibit 2669. 3 THE COURT: Thank you. 4 BY MR. PANATIER: 5 Q. And you see it's prepared for Windsor 6 Minerals? 7 A. Yes. 8 Q. And, in fact, the title is, 9 "Mineralogical Investigation of Three Main 10 Contaminating Rock Types in a Talc Deposit of 11 Windsor, Vermont." 12 So we know this is Windsor's talc. This is 13 the talc that is being mined by Windsor which is 14 owned by Johnson & Johnson, correct? 15 A. Well, I don't know which mine this 16 relates to. It only says "of the talc deposit of 17 Windsor, Vermont." 18 Q. Johnson & Johnson owns Windsor 19 Minerals? 20 A. Yes, they -- 21 Q. Right? 22 A. Yes. 23 Q. So, if it's any talc being mined by 24 Windsor, then it's something Johnson & Johnson owns? 25 A. Oh, I see, okay. I was thinking</p>	<p style="text-align: right;">Page 168</p> <p>1 opaques," right? 2 A. Yes, that's what's written. 3 Q. "The talc is associated mostly with 4 chloride, muscovite, hydromica, biotite, calcite and 5 tremolite," right? 6 A. That's what's written. 7 Q. Alright. Let's just look at what 8 they say for those. "Actinolite, tremolite, zoisite 9 and apatite are only trace minerals in the samples. 10 Tremolite is the only mineral of the above-mentioned 11 ores which occur in minor amounts, four volume 12 percent Sample B. It also present in Sample A in 13 trace amount accompanied by actinolite. Tremolite 14 actinolite occurs in long prismatic needles." 15 I know we've seen references to needles a 16 number of times by now, correct? 17 A. We have. 18 Q. Okay. And then it talks about the 19 grain size of tremolite and actinolite. 20 Then on the very back page, it just 21 gives us the percentages, tremolite actinolite in 22 two of the samples, trace and 4 percent, right? 23 A. On that particular examination of the 24 rocks, yes. 25 Q. Okay. Now, in fairness -- in</p>
<p style="text-align: right;">Page 167</p> <p>1 Windsor is actually a place, that's where the mines 2 are, in that location. 3 Q. You see here where it says, 4 "Mineralogical investigation three main 5 contaminating rock types the talc deposit of 6 Windsor, Vermont," right? 7 A. Yes, I'm thinking that's Windsor, 8 Vermont's place. 9 Q. Okay. Is it your testimony that that 10 would not include Hammondsville, it would not 11 include Argonaut? 12 A. It might do, yeah. It might do. 13 Q. Okay. Okay. Well, let's see what it 14 says. 15 A. Yeah. 16 Q. Right. They said, "Purpose, to 17 determine the mineral composition of the samples in 18 particular respect to the transparent and opaque 19 contaminates intergrown with talc." 20 Under "mineralogy" it says, "Talc is the 21 second most abundant mineral in the samples." Oh, 22 I'm sorry, just before that. 23 "Both chlorites are intergrown with other 24 minerals such as talc, muscovite, hydromica, 25 biotite, tremolite, apatite, rutile and other</p>	<p style="text-align: right;">Page 169</p> <p>1 fairness, there are other talc deposits around the 2 ones that Johnson & Johnson was mining in Vermont, 3 correct? 4 A. Yes, as I recollect, there were 5 something like 50 mines in the State of Vermont. 6 Q. Sure. It was talc heavy, right? 7 A. Yes. 8 Q. The reason I'm asking you about it is 9 Johnson & Johnson, of course, had this, correct, do 10 you see that Bates Stamped? 11 A. Yes. 12 Q. Okay. And there's an RVZ, Vern 13 Zeitz, right? 14 A. Yes. 15 Q. Okay. So this is something that 16 Johnson & Johnson certainly had, correct? 17 A. Yes. 18 Q. Okay. In fairness, it doesn't 19 specify the exact mines that were being sampled, 20 true? 21 A. No, it doesn't, no. 22 MR. PANATIER: Your Honor, one more 23 document and then lunch break? 24 THE COURT: Sure. 25 (There is a discussion off the</p>

<p style="text-align: right;">Page 170</p> <p>1 record.)</p> <p>2 BY MR. PANATIER:</p> <p>3 Q. The next one should be dated March 2,</p> <p>4 March 2, '87. So that's probably going to be three</p> <p>5 or four. Let me help you.</p> <p>6 A. Uh-huh.</p> <p>7 Q. This is three. Yeah, it will be at</p> <p>8 the tail end of three. And this is Exhibit 2723.</p> <p>9 A. March 4th, '87?</p> <p>10 Q. This is March 2, '87.</p> <p>11 A. March 2, '87, got it.</p> <p>12 Q. You see that it's entitled</p> <p>13 "Mineralogical Report"?</p> <p>14 A. Yes.</p> <p>15 Q. Have you seen this document before?</p> <p>16 A. I don't think I have, no.</p> <p>17 Q. You and I can then decide if it's</p> <p>18 relevant, okay?</p> <p>19 So you can see it says, "subject,</p> <p>20 microscopic examination of various flotation, high</p> <p>21 intensity magnetic static and Archimedes spiral</p> <p>22 separator products of Windsor talc," right?</p> <p>23 A. Yes.</p> <p>24 Q. Now, the "flotation," we know that's</p> <p>25 the cosmetic talc, right, they didn't float the</p>	<p style="text-align: right;">Page 172</p> <p>1 product," right?</p> <p>2 A. That's what's written.</p> <p>3 Q. Another reference to needles, right?</p> <p>4 A. Yes.</p> <p>5 Q. Now, they're talking about the</p> <p>6 Raymond Mill and that is the specific mill that was</p> <p>7 being used by Johnson & Johnson for the cosmetic</p> <p>8 talc, right?</p> <p>9 A. There was more than one Raymond Mill.</p> <p>10 Raymond Mill it's a brand name, made by the Raymond</p> <p>11 Company. And that mill is -- the ore went into</p> <p>12 powder. But they also milled industrial as well as</p> <p>13 cosmetic.</p> <p>14 Q. Okay. Were they using -- but to be</p> <p>15 clear, okay, so that's a machine?</p> <p>16 A. Yeah, it's a, you know, like a Ford</p> <p>17 car. It's a Raymond Mill.</p> <p>18 Q. Okay. Do you know whether or not</p> <p>19 they used the same mill for the cosmetic and the</p> <p>20 industrial?</p> <p>21 A. I do know and they did not,</p> <p>22 otherwise, that would be contamination. You'd avoid</p> <p>23 that.</p> <p>24 Q. Okay. Let's go to the next page</p> <p>25 tremolite. So, to be clear, Johnson & Johnson would</p>
<p style="text-align: right;">Page 171</p> <p>1 industrial, right?</p> <p>2 A. Correct.</p> <p>3 Q. And you can see that the purpose was</p> <p>4 "to determine any contaminating minerals in talc,</p> <p>5 concentrates and ore in particular respect to their</p> <p>6 tremolite content."</p> <p>7 Now, it doesn't say "tremolite asbestos,"</p> <p>8 does it?</p> <p>9 A. No. You read what is written.</p> <p>10 Q. But they did a specific test to find</p> <p>11 out if there was tremolite to determine the content,</p> <p>12 right?</p> <p>13 A. Someone did. I don't know who this</p> <p>14 -- I'm trying to find out who the author is, but</p> <p>15 there's no author.</p> <p>16 Q. Not all the documents that we got</p> <p>17 from Johnson & Johnson list the author.</p> <p>18 A. Okay.</p> <p>19 Q. On the second page under "Discussion"</p> <p>20 they're describing the preparation. They say, "In</p> <p>21 this thin sections the talc plates show preferred</p> <p>22 orientation according to one of the pseudohexagonal</p> <p>23 edges of the plate. This may cause some difficulty</p> <p>24 in the immediate recognition of needle-type minerals</p> <p>25 such as tremolite actinolite contaminating the talc</p>	<p style="text-align: right;">Page 173</p> <p>1 not want to mill the industrial with the cosmetic,</p> <p>2 fair?</p> <p>3 A. No, you keep them separate.</p> <p>4 Q. Okay. Tremolite as an iron-poor</p> <p>5 needle-type amphibole was detected only as to two or</p> <p>6 three small needles in the sand of the Raymond Mill</p> <p>7 feed and one needle in the fourth cleaner</p> <p>8 concentrate and tailings treated with sodium</p> <p>9 silicate and citric acid. Tremolite is present in</p> <p>10 the fines minus 100 plus 200 mesh in 6 volume</p> <p>11 percent as free needles in the loose grain mounds.</p> <p>12 It was detected only as two or three small needles</p> <p>13 in the other products such as the high intensely</p> <p>14 magnetic static belt and Archimedes spiral</p> <p>15 products." They found a lot of tremolite needles,</p> <p>16 fair?</p> <p>17 A. Well, they certainly -- they report</p> <p>18 finding needles, yes --</p> <p>19 Q. Okay.</p> <p>20 A. -- tremolite.</p> <p>21 Q. Throughout the process, right?</p> <p>22 A. Yeah. I don't know what product they</p> <p>23 were milling, though. It doesn't say, does it?</p> <p>24 Q. Well, this is flotation. We know</p> <p>25 it's cosmetic.</p>

<p style="text-align: right;">Page 174</p> <p>1 A. This looks like an experiment to me, 2 but they floated. Yes, they were doing a flotation. 3 Q. They didn't float the industrial, did 4 they? 5 A. Not in production, no, no. 6 Q. "Tremolite and serpentine are present 7 only in subtrace amounts in the flotation and other 8 separation products, right? 9 A. That's what's written. 10 Q. So the product still had the 11 tremolite, right? 12 A. Well, again, this looks to me like an 13 experimental study rather than production. 14 Q. And they -- they, certainly, did do a 15 lot of experiments. We'll see in 1974 where they do 16 an experiment to try to suppress the chrysotile 17 that's present in the ore, correct? 18 MS. SULLIVAN: Objection, foundation 19 it's argument. That's not what the document said. 20 THE WITNESS: They did many -- 21 THE COURT: Objection, overruled. 22 You can answer. 23 THE WITNESS: I'll say, correct, they 24 did many experiments over the years, many 25 experiments.</p>	<p style="text-align: right;">Page 176</p> <p>1 (Jury exits.) 2 THE COURT: Thank you. 3 We're off the record. I'll see 4 everyone at 1:30. 5 (There is a discussion off the 6 record.) 7 MR. PANATIER: Your Honor, can I just 8 offer 2723? 9 MS. SULLIVAN: No objection. 10 THE COURT: Ercilyn, back on the 11 record. 12 We're back on the record. 13 What are you offering into evidence? 14 2723. 15 THE COURT: And there is no 16 objection, so thank you. 17 (Plaintiff's Exhibit 2723 was moved 18 into evidence.) 19 (Lunch recess taken 12:27 to 1:37 20 p.m.) 21 (Jury enters.) 22 THE COURT: Please be seated. Make 23 sure cell phones are turned off. 24 Whenever you're ready, Mr. Panatier, 25 you can continue.</p>
<p style="text-align: right;">Page 175</p> <p>1 BY MR. PANATIER: 2 Q. Okay, alright. And in fairness, when 3 we were talking about this volume of documents, some 4 are going to be experiments, right, and some will be 5 analysis of actual product, fair? 6 A. Yes. 7 Q. Okay. What this does and we'll look 8 into it a little bit more after the break. But what 9 this does is it's yet more proof that to the extent 10 there's tremolite or actinolite needles present, it 11 is not removed by flotation, correct? 12 A. Yes, I would never disagree with 13 that. 14 Q. Alright. 15 MR. PANATIER: Your Honor, I think 16 it's good time. 17 THE COURT: Members of the jury, 18 we're going to take a lunch break now. Leave your 19 notebooks here. Remember to wear juror badges where 20 are they visible. No discussions with regard to 21 this case, including testimony you've just heard, no 22 research of any kind whatsoever. 23 Enjoy your lunch. Be ready to come 24 back upstairs at 1:30. Thank you. 25 THE COURT OFFICER: Jury exiting.</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. PANATIER: Thank you, your Honor. 2 Good afternoon, everybody. 3 BY MR. PANATIER: 4 Q. Okay. So, before we left for lunch, 5 sir, we were talking about that research that was 6 done by Mountain States Research in Arizona. Do you 7 recall that? 8 A. I do. 9 Q. And you had brought up that there 10 might be some other mines in or around Windsor, 11 Vermont, right? 12 A. I think at one time I remember there 13 was up to 50 in the State of Vermont. 14 (There is a discussion off the 15 record.) 16 MR. PANATIER: Okay. So this will be 17 Exhibit 3695-30 and I'll just mark it right now. 18 There you are, your Honor. 19 THE COURT: Thank you. 20 BY MR. PANATIER: 21 Q. There you go, sir. 22 So what I did over the break is I looked 23 through some of these documents to see if I could 24 find any other information, alright. 25 And do you see here you have a July 23, 1987</p>

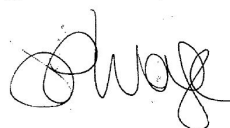
<p style="text-align: right;">Page 178</p> <p>1 document from Roger Miller to William C. Egan 2 subject of which is process modifications? 3 A. Yes. 4 Q. Alright. And there's another note at 5 the top. It says, "BS_" and that's, in all 6 likelihood, probably Bruce Semple, would that be? 7 A. He was there in '87. I don't whether 8 that was him or not. 9 Q. Okay. It's not really important. 10 The handwritten note is not super important. 11 MR. PANATIER: Your Honor, we offer 12 this in evidence. 13 MS. SULLIVAN: No objection. 14 THE COURT: Admitted. 15 (Plaintiff's Exhibit 3695-30 was 16 moved into evidence.) 17 BY MR. PANATIER: 18 Q. Okay. And just to give us a 19 framework of what we were talking about. There were 20 two documents. One was this document from 21 December 15th, 1977 where Mountain States Research 22 had done some work for Windsor Minerals, right? 23 A. Yes, they had done some geological 24 reports, yes. 25 MS. SULLIVAN: I'm sorry, Counsel.</p>	<p style="text-align: right;">Page 180</p> <p>1 from '77 and then the second one from March of '87 2 where we had looked at what you said could be an 3 experiment where they were experimenting with 4 flotation with particle respect to the tremolite 5 content, correct? 6 A. That was '77? 7 Q. That was '87 -- '82, I'm sorry. So 8 we have '77 and then we have '80 -- sorry '87 -- '77 9 and '87 -- 10 A. Yes. 11 Q. -- right? 12 Now, this document is July 23rd of '87 the 13 one that I've just given to you, right? 14 A. Yes. 15 Q. Okay. And what they say there in the 16 first paragraph is, "Working with Mountain States 17 Research or Vail, Arizona, we have tested in their 18 laboratories and confirmed by plant trials here at 19 West Windsor the efficacy of sodium silicate as a 20 modifier, disbursing agent, to enhance the rejection 21 of deleterious mineral species in our process." Do 22 you see that? 23 A. Yes. 24 Q. "Deleterious" means could be bad, 25 damaging, something you don't want, right?</p>
<p style="text-align: right;">Page 179</p> <p>1 THE COURT: Sidebar. Take your 2 document down, please. 3 MR. PANATIER: Okay. 4 THE COURT: Yeah, thank you. 5 (Sidebar.) 6 MR. PANATIER: I'm so sorry, Judge. 7 I didn't -- I'll make sure it doesn't get shown. 8 MS. SULLIVAN: Well, before you go, 9 what part of it of it do you wish to show? 10 MR. PANATIER: So just the top part 11 and the part at the bottom and I don't think it says 12 anything. Yeah. 13 MS. SULLIVAN: The what? 14 MR. PANATIER: Just the bottom, yeah, 15 paragraph second to last and last. 16 THE COURT: And objection to that as 17 long as the rest -- 18 MS. SULLIVAN: No. 19 THE COURT: Just make sure that you 20 cover that up. Okay. 21 MR. PANATIER: Yes, of course. 22 THE COURT: Thank you. 23 (Sidebar ends.) 24 BY MR. PANATIER: 25 Q. So we had looked at that one that one</p>	<p style="text-align: right;">Page 181</p> <p>1 A. Something you don't want. 2 Q. Okay. And just to be clear that 3 we're talking about the right talc here, you can see 4 that at the bottom of Page 2 they say, "We will 5 shortly forward for approval via organoleptic 6 evaluation a sample of grade 66 talc processed by 7 the improved methods. This material will 8 incorporate both the dispersion technique utilizing 9 the sodium silicate and the organic acid technique. 10 We do not believe that either of the special 11 techniques will leave a residual in the grade 66 12 talc." 13 That's what I'm trying to get to. Grade 66 14 is the baby powder talc, right? 15 A. Yes. 16 Q. "We would like to move forward in 17 this matter, so I will appreciate early feedback of 18 the results of the testing at baby products 19 company." 20 So this testing, at least, what he's 21 referencing here, did have to do with the baby 22 powder that they were concerned about, right? 23 A. In this 1987 report, yes. 24 Q. Oh, alright. 25 A. Yes.</p>

<p style="text-align: right;">Page 182</p> <p>1 Q. And are you aware of any other -- any</p> <p>2 other testing that was done by this institution in</p> <p>3 Arizona for Johnson & Johnson other than what I've</p> <p>4 just shown you?</p> <p>5 A. I'm not aware of, no.</p> <p>6 THE COURT: For the record, where did</p> <p>7 you put those documents?</p> <p>8 MR. PANATIER: In the inbox.</p> <p>9 THE COURT: Thank you.</p> <p>10 BY MR. PANATIER:</p> <p>11 Q. Okay. I'm going to take us back to</p> <p>12 powder in the sheets. I'm going to try again.</p> <p>13 And perhaps we can -- well, here,</p> <p>14 I'll hand you a copy of this.</p> <p>15 MR. PANATIER: And, for the record,</p> <p>16 this document is 1996. It will be 3695-29.</p> <p>17 Q. Here you go, sir.</p> <p>18 A. This one?</p> <p>19 Q. This one right here, yeah.</p> <p>20 MR. PANATIER: Here you go, your</p> <p>21 Honor.</p> <p>22 THE COURT: Thank you.</p> <p>23 MR. PANATIER: Sure.</p> <p>24 Q. And, sir, you see that this has the</p> <p>25 J&J Bates Stamp on it?</p>	<p style="text-align: right;">Page 184</p> <p>1 Q. Sure. Whether it's the company or</p> <p>2 somebody they hire to do the research, they're</p> <p>3 interested in information about how their products</p> <p>4 are used, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So, look, on this one I asked</p> <p>7 you about sheets, people using it on their sheets.</p> <p>8 So look at Page 8, please.</p> <p>9 Do you see here it says, "It is not</p> <p>10 surprising that during the warm and humid summer</p> <p>11 months, powder usage is said to be remembered and</p> <p>12 used with greater frequently. During the warm</p> <p>13 months a few woman said that they used powder in</p> <p>14 between showers and also sprinkle powder between</p> <p>15 sheets."</p> <p>16 So Johnson & Johnson was, certainly,</p> <p>17 aware that some customers did this as a use of their</p> <p>18 product, correct?</p> <p>19 A. Well, that's of 1996, that's -- yeah.</p> <p>20 Q. Right?</p> <p>21 A. Yes.</p> <p>22 Q. And then if you'll turn to Page 10.</p> <p>23 "Apart from the desire to want their own brand of</p> <p>24 powder, many of the Shower to Shower users inherited</p> <p>25 the product ritual from their mothers. Even a</p>
<p style="text-align: right;">Page 183</p> <p>1 A. Yes.</p> <p>2 Q. It's dated 1996?</p> <p>3 A. Yes.</p> <p>4 Q. It says, "Shower to Shower</p> <p>5 confidential." It says, "Qualitative Research</p> <p>6 conducted on behalf of Johnson & Johnson consumer</p> <p>7 products, Inc.," correct?</p> <p>8 A. Yeah.</p> <p>9 MR. PANATIER: Okay. And, your</p> <p>10 Honor, we offer this into evidence as Exhibit</p> <p>11 3695-29.</p> <p>12 MS. SULLIVAN: And, your Honor, I'm</p> <p>13 going to object, hearsay. It's an outside company's</p> <p>14 document.</p> <p>15 MR. PANATIER: It goes to notice,</p> <p>16 your Honor.</p> <p>17 THE COURT: I'll allow it as to</p> <p>18 notice only.</p> <p>19 MS. SULLIVAN: Thank you.</p> <p>20 BY MR. PANATIER:</p> <p>21 Q. So sometimes the company will do</p> <p>22 market research, they'll have prospective customers</p> <p>23 come in and they'll survey them, right?</p> <p>24 A. Well, usually, the company doesn't.</p> <p>25 It's an agent that would do it in this case.</p>	<p style="text-align: right;">Page 185</p> <p>1 relatively young user said that she had first tried</p> <p>2 Shower to Shower because her mother was using it.</p> <p>3 And quickly began to use it more regularly and then</p> <p>4 went to purchase her own. So was the case for a</p> <p>5 majority of these woman who had first become aware</p> <p>6 of Shower to Shower right at home and then continued</p> <p>7 quite loyally, it appears, to maintain their usage</p> <p>8 over a period of years."</p> <p>9 And my question is, Johnson & Johnson</p> <p>10 certainly doesn't disagree that a lot of users of</p> <p>11 the products got it -- started using it because a</p> <p>12 parent was using it on them or was using it in their</p> <p>13 company, fair?</p> <p>14 A. That's not an unreasonable</p> <p>15 conclusion.</p> <p>16 Q. Alright. Sir, that's all I have.</p> <p>17 So Johnson & Johnson, certainly, understood</p> <p>18 that people would sprinkle it in their sheets, at</p> <p>19 least, by '96, right?</p> <p>20 A. Yes. By '96, yes.</p> <p>21 Q. And at no point did Johnson & Johnson</p> <p>22 ever put out information whether it be on a package,</p> <p>23 in a commercial or anything like that, that said,</p> <p>24 here's a use we're aware of, don't sprinkle this in</p> <p>25 your sheets, right?</p>

<p style="text-align: right;">Page 186</p> <p>1 A. I'm not aware of that.</p> <p>2 Q. Is there any reason that a person</p> <p>3 shouldn't sprinkle it into their sheets?</p> <p>4 A. Again, I'm not aware that they</p> <p>5 wouldn't. They're still getting it on their body.</p> <p>6 Q. Let's jump ahead.</p> <p>7 This is dated July 23, 1987. So, if</p> <p>8 you can find your binder with '87.</p> <p>9 A. Yeah.</p> <p>10 Q. Do you have it?</p> <p>11 A. I do.</p> <p>12 Q. Okay. Great. This is Exhibit 3446.</p> <p>13 And do you see that this is -- if you turn the page</p> <p>14 to -- it looks like this.</p> <p>15 A. Yes.</p> <p>16 Q. The third page in?</p> <p>17 A. Uh-huh.</p> <p>18 Q. It's an affidavit of Roger Miller,</p> <p>19 right?</p> <p>20 A. It is.</p> <p>21 Q. Roger Miller was the President of</p> <p>22 Windsor Minerals, which was the company owned by</p> <p>23 Johnson & Johnson?</p> <p>24 A. It was.</p> <p>25 Q. And do you see that he filled out a</p>	<p style="text-align: right;">Page 188</p> <p>1 the truth about whether or not asbestos had been</p> <p>2 detected in powders when he was defending the</p> <p>3 company publically.</p> <p>4 THE COURT: So this was -- this was</p> <p>5 No. 3 -- (The Judge reads to herself out loud.)</p> <p>6 MR. PANATIER: Yes, your Honor.</p> <p>7 THE COURT: And your objection is?</p> <p>8 MS. SULLIVAN: Yes.</p> <p>9 THE COURT: I can't hear you.</p> <p>10 MS. SULLIVAN: It's the record, I'm</p> <p>11 objecting to hearsay (INAUDIBLE) to test.</p> <p>12 MR. PANATIER: Yeah, he references</p> <p>13 the text. That's fine.</p> <p>14 THE COURT: Okay. So I'll allow the</p> <p>15 statement as to the interest and whether you don't</p> <p>16 use the test (INAUDIBLE) and I'm going to admit it</p> <p>17 for purposes of completeness --</p> <p>18 MS. SULLIVAN: (INAUDIBLE.)</p> <p>19 MR. PANATIER: Fine. I'll show it.</p> <p>20 (Sidebar ends.)</p> <p>21 THE COURT: Okay. This document is</p> <p>22 now admitted.</p> <p>23 MS. SULLIVAN: Thank you, your Honor.</p> <p>24 (Plaintiff's Exhibit 3446 was moved</p> <p>25 into evidence.)</p>
<p style="text-align: right;">Page 187</p> <p>1 sworn affidavit?</p> <p>2 A. Yeah, he appears to, yes.</p> <p>3 Q. Okay. He signed it on the 13th day</p> <p>4 of July, 1987, true?</p> <p>5 A. Yes.</p> <p>6 Q. And back on the front where his</p> <p>7 affidavit is, he signed this in Middlesex County,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 MR. PANATIER: Your Honor, we offer</p> <p>11 this into evidence.</p> <p>12 MS. SULLIVAN: It's hearsay, your</p> <p>13 Honor and unrelated. It looks like unrelated</p> <p>14 lawsuits.</p> <p>15 THE COURT: How about we do this at</p> <p>16 sidebar.</p> <p>17 (Sidebar.)</p> <p>18 THE COURT: What is the purpose for</p> <p>19 which you are offering this into evidence?</p> <p>20 MR. PANATIER: Yes, your Honor, this</p> <p>21 is -- first of all, this would be an admission in</p> <p>22 Plaintiff's interest. It's also an admission from</p> <p>23 (INAUDIBLE) Stork by Johnson & Johnson. And the</p> <p>24 purpose is to demonstrate that Mr. Miller, after all</p> <p>25 of the records that we've gone through did not tell</p>	<p style="text-align: right;">Page 189</p> <p>1 BY MR. PANATIER:</p> <p>2 Q. Alright. Sir, so if you go to</p> <p>3 Paragraph 1, Mr. Miller says, "I'm the president of</p> <p>4 Windsor Minerals, Inc., and I've held that position</p> <p>5 since 1968 when Windsor Minerals, Inc., was first</p> <p>6 formed. The exclusive business of Windsor Minerals</p> <p>7 is and has been over the last 18 years the mining</p> <p>8 and milling of talc from a single milling district</p> <p>9 in Windsor, Vermont."</p> <p>10 Now, the last 18 years, so he's referencing</p> <p>11 the full-time, isn't he?</p> <p>12 A. Yes.</p> <p>13 Q. Right? He's not referencing a</p> <p>14 specific date, true?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. "That mining district is the</p> <p>17 exclusive source of talc for all of the Johnson's</p> <p>18 Baby Powder sold in the United States. In addition</p> <p>19 to supplying the talc for Johnson's Baby Powder,</p> <p>20 Windsor Minerals, Inc., also sells a portion of its</p> <p>21 products to independent industrial users."</p> <p>22 So he's including in this paragraph</p> <p>23 everything they sell, their baby powder talc and</p> <p>24 their industrial talc, correct?</p> <p>25 A. Yeah, it says what it says. It sells</p>

<p style="text-align: right;">Page 190</p> <p>1 a portion of it's product to industrial uses.</p> <p>2 Q. As well as the baby powder, correct?</p> <p>3 A. As well as the baby powder.</p> <p>4 Q. They didn't sell any other products.</p> <p>5 He's listed everything they sold, right?</p> <p>6 A. They sold industrial and they sold</p> <p>7 cosmetic talc, yes.</p> <p>8 Q. My question is, has he listed</p> <p>9 everything that Windsor Minerals sold between the</p> <p>10 cosmetic and the industrial?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Let's go to the next page.</p> <p>13 And, again, you understand this was -- this</p> <p>14 was in a case called Edly versus Windsor Minerals?</p> <p>15 Do you see that on the front?</p> <p>16 A. Yes.</p> <p>17 Q. And you see here it says it's sworn?</p> <p>18 This is a sworn statement?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Let's go to what he says last.</p> <p>21 "All of the talc mind by Windsor Minerals, Inc.,</p> <p>22 whether it is ultimately sold to industrial users or</p> <p>23 used in Johnson's Baby Powder is sampled and tested</p> <p>24 for the presence of asbestos. No evidence of the</p> <p>25 presence of asbestos in Windsor Minerals' product</p>	<p style="text-align: right;">Page 192</p> <p>1 indicates asbestos free in the product that is sold.</p> <p>2 We've seen some results on industrial talcs that</p> <p>3 don't demonstrate that.</p> <p>4 Q. We've seen the HC samples that show</p> <p>5 asbestos, correct?</p> <p>6 A. We've seen it.</p> <p>7 Q. Hold on. It's one question.</p> <p>8 A. Sorry. I thought you had finished.</p> <p>9 Q. We've seen the HC samples that show</p> <p>10 asbestos, right, 1975, right?</p> <p>11 A. Yes.</p> <p>12 Q. We've seen GI and WI, those are</p> <p>13 industrial, correct, at least, as of this year those</p> <p>14 were industrial, right?</p> <p>15 A. I believe so, yes.</p> <p>16 Q. Right? We saw them again in</p> <p>17 November. Over and over and over again. And those</p> <p>18 were written, sir, to who?</p> <p>19 A. To whom?</p> <p>20 Q. Yeah. They were written to Windsor</p> <p>21 Mineral, right?</p> <p>22 A. Yes.</p> <p>23 Q. This is the President of Windsor</p> <p>24 Mineral in a lawsuit saying, no evidence of the</p> <p>25 presence of asbestos in Windsor Minerals' product.</p>
<p style="text-align: right;">Page 191</p> <p>1 has ever been revealed by this testing." Did he say</p> <p>2 that?</p> <p>3 A. You read what he wrote.</p> <p>4 Q. And he attached a recent test, right?</p> <p>5 Right?</p> <p>6 A. Yes.</p> <p>7 Q. He attached one test from -- that</p> <p>8 looks like -- I don't know that this is a year yet.</p> <p>9 We probably have a few thousand years to go, but I</p> <p>10 think that's 1987, right?</p> <p>11 A. Yes.</p> <p>12 Q. He attaches one test, does he not?</p> <p>13 A. Exhibit A is one page.</p> <p>14 Q. Okay. Alright. This statement was</p> <p>15 false, correct?</p> <p>16 A. Well, the statement -- I'm not going</p> <p>17 to comment on whether it was false or true. It's</p> <p>18 for Roger Miller to comment.</p> <p>19 Q. No. It's for you to comment. You're</p> <p>20 here for Johnson & Johnson and Johnson & Johnson was</p> <p>21 using this talc. So my question is, was Mr. Miller</p> <p>22 being truthful or was he being untruthful?</p> <p>23 A. Well, okay, let's go through that</p> <p>24 sentence, if I may. Industrial users or use in baby</p> <p>25 powder. The baby powder testing that is available</p>	<p style="text-align: right;">Page 193</p> <p>1 And he included -- I asked you, he included</p> <p>2 everything they'd ever sold, cosmetic and</p> <p>3 industrial, has ever revealed or been revealed by</p> <p>4 this testing.</p> <p>5 Here's the question. Was that true or was</p> <p>6 that false?</p> <p>7 A. On the face of it, it does not appear</p> <p>8 to be true.</p> <p>9 Q. So that makes it what?</p> <p>10 A. Unless we've got other evidence. On</p> <p>11 the face of it, it would not be true. Unless --</p> <p>12 Q. Which would make it?</p> <p>13 A. It would make it false, unless there</p> <p>14 is other evidence that we don't have here.</p> <p>15 Q. But this -- well, presumably, sir,</p> <p>16 Mr. Miller had all the evidence at his disposal, did</p> <p>17 he not?</p> <p>18 A. In 1987?</p> <p>19 Q. Yeah.</p> <p>20 A. He must have been a very old man in</p> <p>21 1987. I'm sure he long retired.</p> <p>22 Q. I didn't ask you his age.</p> <p>23 A. I don't know if he had the evidence</p> <p>24 at his disposable -- at his disposal.</p> <p>25 Q. Sir, this is the President of Windsor</p>

<p style="text-align: right;">Page 194</p> <p>1 Minerals in 1987. No one -- you wouldn't expect 2 anybody at the company to have more access to the 3 information of that company than him, correct? 4 A. You would expect him to be able to 5 access, if he requested it. 6 Q. That was stated publically, correct, 7 in a lawsuit, right? 8 A. It is. The document states what it 9 states. 10 Q. The documents we had going directly 11 to them in the '70s were internal, correct? 12 A. Yes. 13 Q. Do you know what happened to that 14 person's lawsuit as a result of Mr. Miller's 15 affidavit? 16 A. No. 17 Q. Is there any excuse to not be 18 truthful ever? 19 MS. SULLIVAN: Objection. 20 A. Everyone should also aim to speak the 21 truth. 22 Q. Whether they're under oath or not? 23 A. Yes. 24 Q. And he was under oath, wasn't he? 25 A. I believe so, yes.</p>	<p style="text-align: right;">Page 196</p> <p>1 about this, did they run it over to the FDA? 2 A. I don't know. 3 Q. Because the only thing that was 4 published when she published it was the article, not 5 the key, correct? 6 A. The article was published. The key 7 appears many years later, as I understand it. But 8 the article stands by itself. 9 Q. So, in the article where it says that 10 there were needles and fibers in Sample I, if you're 11 just looking at the article, you have no idea what 12 Sample I is, correct? 13 A. Correct. 14 Q. But looking at the key, you do know, 15 because it says what Sample I is, right? 16 A. The key states samples A, B, C, D, E, 17 down to I. It does state what Sample I is on that 18 key. 19 Q. And you know that -- and, by the way, 20 is this Dr. Blount? 21 A. Yes, she had a Ph.D. in mineralogy. 22 Q. This is also in evidence. This is 23 Exhibit 3191. This is another copy of her letter. 24 And, of course, this was produced by J&J. Can you 25 see that?</p>
<p style="text-align: right;">Page 195</p> <p>1 Q. And that is -- you understand that is 2 perjury, do you not? 3 A. I do. 4 Q. Okay. Alright. 5 (There is a discussion off the 6 record.) 7 MR. PANATIER: This is 1991. This is 8 already in evidence. It's Exhibit 3390. This is 9 the Blount paper, your Honor. 10 Q. Sir, you know who Alice Blount is, 11 correct? 12 A. Yes. 13 Q. I'll just put it up here. It's 14 already in evidence. 15 A. Okay, yes. 16 Q. She published this paper in 1991, 17 right? 18 A. She did publish that paper in 1991, 19 yes. 20 Q. We know that per her key and her 21 letters, we know that she tested Johnson's Baby 22 Powder, correct? 23 A. In the report she states that she 24 tested baby powder, yes. 25 Q. Now, when Johnson & Johnson found out</p>	<p style="text-align: right;">Page 197</p> <p>1 A. Yes. 2 Q. By the way, the first one was 3 produced by Johnson & Johnson, too. Do you see 4 that? 5 A. Yes. 6 Q. Meaning that Johnson & Johnson had 7 the key, correct? 8 A. There is a key. 9 Q. Right. You see the Bates Stamp at 10 the bottom of the key? 11 A. There is a key. 12 Q. So the key -- key is in the inbox, 13 right, because that is something that Johnson & 14 Johnson had, true? 15 A. Well, the key is in the Johnson & 16 Johnson files. A key is in the Johnson & Johnson 17 files. 18 Q. Okay. And you know that in 1992, one 19 year after the paper came out -- so not many years 20 later, but one year after the paper came out, she 21 wrote to Luzenac, correct? 22 A. I can't remember that, but refresh 23 me. 24 Q. It's right up there. 25 MS. SULLIVAN: Objection. Can I get</p>

<p style="text-align: right;">Page 198</p> <p>1 a copy, Counsel?</p> <p>2 MR. PANATIER: Sure. This is</p> <p>3 Exhibit 3191. That's correct. This is from 1992,</p> <p>4 right.</p> <p>5 BY MR. PANATIER:</p> <p>6 Q. And Luzenac -- yes?</p> <p>7 A. So is this in here?</p> <p>8 Q. Yes, sir. It is in there. It will</p> <p>9 be under the tab that is 1992, if you want to look</p> <p>10 at it. It's, also, up on the board if you would</p> <p>11 like to reference it there.</p> <p>12 Do you have it, sir?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Okay, good.</p> <p>15 So she writes -- and by the way, she</p> <p>16 was at the Newark Museum at that time. Do you see</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And there's her signature down</p> <p>20 there. She was a consultant to Johnson & Johnson,</p> <p>21 correct?</p> <p>22 A. Johnson & Johnson had used her on</p> <p>23 isolated occasions as a consultant, correct.</p> <p>24 Q. They had paid for a lot of her</p> <p>25 research, correct?</p>	<p style="text-align: right;">Page 200</p> <p>1 CERTIFICATION</p> <p>2</p> <p>3 I, SILVIA P. WAGE, C.S.R., License Number</p> <p>4 30X100182700, a Certified Court Reporter in and for</p> <p>5 the State of New Jersey, do hereby certify the</p> <p>6 foregoing to be prepared in full compliance with the</p> <p>7 current Transcript Format for Judicial Proceedings</p> <p>8 and to true and accurate non-compressed transcript</p> <p>9 dge and ability.</p> <p>10 </p> <p>11</p> <p>12 SILVIA P. WAGE JULY 22, 2019</p> <p>13 CERTIFIED COURT REPORTER DATE</p> <p>14 MIDDLESEX COUNTY COURTHOUSE</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 199</p> <p>1 A. I don't know how much they ever paid,</p> <p>2 but they had used her on occasions as a consultant</p> <p>3 for her mineralogical ability.</p> <p>4 Q. Sure. And I don't know how much they</p> <p>5 paid her either.</p> <p>6 A. No.</p> <p>7 Q. But my question wasn't how much they</p> <p>8 paid her.</p> <p>9 My question was, she was paid by them</p> <p>10 for her research, correct?</p> <p>11 A. Again, I don't know how often or on</p> <p>12 what occasion. She was a consultant. I know no</p> <p>13 more than that, whether it was one off, two off,</p> <p>14 three off. But she did some consultancy.</p> <p>15 Q. I'm not asking how much she did or</p> <p>16 how much she got paid.</p> <p>17 By being a consultant, that meant she was</p> <p>18 paid, right?</p> <p>19 A. Yes.</p> <p>20 Q. That's all I'm asking.</p> <p>21 A. Okay.</p> <p>22 (Continuation of the day's</p> <p>23 proceedings in Volume 2.)</p> <p>24</p> <p>25</p>	

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Exhibit 174

Attorney(s): LEVINSON, CONOVER, AXELROD, WHEATON & GRAYZEL

Office Address & Tel. No.: 2 Lincoln Highway, Edison, New Jersey 08818-2905
(201)494-2727

Attorney(s) for Plaintiff

LOUIS EDLEY

Plaintiff(s)

vs.

E & B MILL SUPPLY, et als

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

DOCKET NO. L-075913-86


CIVIL ACTION

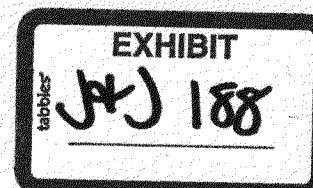
Stipulation of Dismissal
with prejudice
(as to defendant, Windsor Minerals, Inc.)

The matter in difference in the above entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed without costs against either party, with prejudice as to defendant, Windsor Minerals, Inc.

Dated: July 23, 19 87

By _____
RONALD S. LEVITT
Attorney(s) for Defendant(s)
WINDSOR MINERALS, INC.

By  _____
RONALD B. GRAYZEL
Attorney(s) for Plaintiff(s)
LOUIS EDLEY



NEWMAN, HERMAN, SALTMAN, LEVITT AND FEINSON

A PROFESSIONAL ASSOCIATION

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By Appointment Only
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OUR FILE NO.
11092-L

July 23, 1987

Ronald B. Grayzel, Esq.
Levinson, Conover, Axelrod, Wheaton & Grayzel
Lincoln Plaza, 2 Lincoln Highway
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Edison, New Jersey 08818-2905

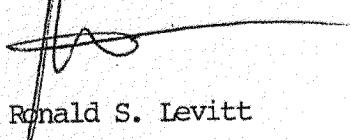
RE: Edley -v- Madsen & Howell, Windsor Minerals, Inc., et als

Dear Mr. Grayzel:

Enclosed please find an Affidavit on behalf of Windsor Minerals, Inc., signed by Roger N. Miller, President of Windsor Minerals, Inc. since 1968. Also enclosed you will find an assay from McCrone Environmental Services, Inc. I trust that these documents will now enable you to sign a Dismissal as was done in the Yuhas file. I have taken the liberty of drafting the Dismissal and enclosing the same for your signature along with a self-addressed stamped envelope.

If you are still unable or unwilling to sign the Dismissal, please forward immediately your client's answers to supplemental interrogatories which were served upon you almost one year ago.

Very truly yours,



Ronald S. Levitt

RSL/gbf
Encl.

cc: Michael M. Tanenbaum, Esq., McCarter & English
Thomas M. Kelly, Esq., Morley, Cramer, Tansey, Haggarty & Fanning
Anthony Luongo, Esq., Donington, Leroe, Toland & Luongo

Certified Mail, Return Receipt Requested

-----	:	
LOUIS EDLEY,	:	SUPERIOR COURT
	:	OF NEW JERSEY
Plaintiff,	:	LAW DIVISION
	:	MIDDLESEX COUNTY
vs.	:	
	:	DOCKET NO. L-075913-86
WINDSOR MINERALS, INC.;	:	
NICOLET, INC., as Successor-	:	CIVIL ACTION
in-Interest to Keasby &	:	
Mattison; GAF CORP., RUBEROID,	:	AFFIDAVIT
GAF CORP., as Successor-in-	:	
Interest to Ruberoid; MADSEN	:	
& HOWELL, INC.; JOHN DOE #1	:	
to #50 (Fifty Unidentified	:	
Manufacturers and Distributors	:	
of asbestos-containing	:	
products),	:	
	:	
Defendants.	:	
-----	:	

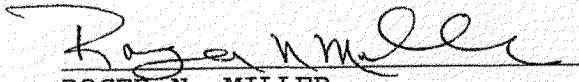
STATE OF VERMONT :
SS.
COUNTY OF WINDSOR :

ROGER N. MILLER, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am the President of Windsor Minerals, Inc. and have held that position since 1968 when Windsor Minerals, Inc. was first formed.

2. The exclusive business of Windsor Minerals, Inc. is, and has been for the last eighteen years, the mining and milling of talc from a single mining district in Windsor, Vermont. That mining district is the exclusive source of talc for all of the Johnson's Baby Powder sold in the United States. In addition to supplying the talc for Johnson's Baby Powder, Windsor Minerals, Inc. also sells a portion of its product to independent industrial users.

3. All of the talc mined by Windsor Minerals, Inc., whether it is ultimately sold to industrial users or used in Johnson's Baby Powder, is sampled and tested for the presence of asbestos. No evidence of the presence of asbestos in Windsor Minerals' product has ever been revealed by this testing. Attached hereto as Exhibit "A" is a true copy of a recent report of such testing.


ROGER N. MILLER

Sworn to and subscribed
before me this 13 day
of July, 1987.



Notary Public
My Commission Expires:
Feb. 10, 1991

Exhibit 175

REDACTED DOCUMENT

Phelps Dodge Corporation

Ext Ref

0000000

**Sale of CIM - Stock Purchase Agreement among Cyprus Mines
Corporation, Cyprus Minerals Company and RTZ America Inc. - 5**

01/58704



2001/58704

Row 12, Section 1, Shelf 5

REDACTED DOCUMENT

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REDACTED DOCUMENT

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Officer's Certificate of Cyprus Mines Corporation, dated June 30, 1992.	52
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Secretary's Certificate and Incumbency Certificate of Cyprus Mines Corporation, dated June 30, 1992.	54
Secretary's Certificate and Incumbency Certificate of Cyprus Minerals Company, dated June 30, 1992.	55
Stock Transfer dated June 30, 1992, between Cyprus Mines Corporation and Talc de Luzenac, S.A.	56
Resignations of Directors and Officers	57
Officer's Certificate of Cyprus Mines Corporation, dated June 30, 1992.	58
Officer's Certificate of Cyprus Minerals Company, dated June 30, 1992.	59
Certificate of the Secretary of the State of Delaware, dated June 23, 1992, as to the good standing of Cyprus Talc Corporation in the state of Delaware.	60
Certificate of the Secretary of the State of Delaware, dated June 23, 1992, as to the good standing of Cyprus Mines Corporation in the state of Delaware.	61
Certificate of the Secretary of the State of Delaware, dated June 23, 1992, as to the good standing of Cyprus Minerals Company in the state of Delaware.	62

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Certificate of Assistant Secretary of Cyprus Minerals Company, dated June 30, 1992.	63
Certificate of Assistant Secretary of Cyprus Mines Corporation, dated June 30, 1992.	64
Cross Receipt	65
Stock Assignment and Stock Certificates	66

REDACTED DOCUMENT

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AGREEMENT OF TRANSFER AND ASSUMPTION

AGREEMENT OF TRANSFER AND ASSUMPTION made this 5th day of June, 1992 by and between Cyprus Talc Corporation, a Delaware corporation ("Newco"), and Cyprus Mines Corporation, a Delaware corporation ("Cyprus").

WHEREAS Cyprus wishes to sell and transfer to Newco, and Newco desires to acquire from Cyprus, all of the "Transferred Assets" (as defined below); and

WHEREAS, Cyprus, Cyprus Minerals Company, a Delaware corporation, and RTZ America Inc., a Delaware corporation, have entered into a Stock Purchase Agreement dated as of June 5, 1992 ("the Stock Purchase Agreement").

NOW THEREFORE, in consideration of the mutual covenants herein set forth:

1. Definitions. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Stock Purchase Agreement.

2. Purchase and Sale. Cyprus, in accordance with and subject to the terms and conditions of this Agreement of Transfer and Assumption, agrees to sell, assign, transfer, convey and deliver to Newco, and Newco agrees to purchase, accept, acquire and take delivery of the Transferred Assets, all for the consideration specified in Section 8.(b)(ii), as they exist at the Newco Closing (as defined below), in each case free and clear of any Encumbrances except Permitted Exceptions. For purposes of this Agreement of Transfer and Assumption, the "Transferred Assets" shall mean all of Cyprus' right, title and interest in and to the assets, properties, rights and businesses of every type and description used primarily in or relating primarily to Cyprus' talc business (the "Talc Business"), whether real, personal or mixed, tangible or intangible, whether currently in use or idle, fixed or unfixed, accrued, absolute, contingent or otherwise, wherever located and including, without limitation, all of the right, title and interest of Cyprus in the assets listed in paragraphs (a) through (l) below (but excluding the assets described in Section 3).

(a) Cyprus' record and beneficial ownership of all of the issued and outstanding shares of capital stock of Cyprus Industrial Minerals Corporation, a Nevada corporation; Cyprus Windsor Minerals Corporation, a Vermont corporation and its subsidiary Cyprus Western Source Corporation, a California

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corporation; and Green Mountain Talc Corporation, a Delaware corporation; and Cyprus' record and beneficial ownership of [REDACTED] of the issued and outstanding shares of capital stock of DIMTA SA, a company organized under the laws of Spain, and Cyprus' record and beneficial ownership of [REDACTED] of the issued and outstanding shares of capital stock of Nihon Mistron Company, Ltd., a Tokyo, Japan corporation (collectively, the "Shares");

(b) the real property and mineral rights of the Talc Business and the records thereof;

(c) All current assets, including without limitation, all cash and, to the extent that the same may exist, all certificates of deposit, accounts receivable, claims, prepaid expenses, deferred charges, advances and deposits;

(d) All talc inventories of finished products, work-in-progress and raw materials of the Talc Business;

(e) All talc facilities and equipment of the Talc Business;

(f) All business machines, furniture and fixtures, supplies, office equipment, vehicles and other tangible personal property used primarily in or relating primarily to the Talc Business;

(g) All trademarks and other marks and, to the extent that the same may exist, all inventions, patents and any copyrights, and registrations thereof, all applications for any of the foregoing and all trade names;

(h) All right, title and interest in, to and under all contracts, agreements, leases, licenses, permits, orders, commitments of understandings to which Cyprus is a party or entitled to any right or interest;

(i) All trade secrets, processes, specifications, designs, drawings and technology which relate primarily to the Talc Business;

(j) All contracts, books, records and other data relating primarily to the Talc Business;

(k) All causes of action and claims of any kind of Cyprus against any other party related primarily to the Talc Business; and

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(1) All other assets and rights of the Talc Business as a going concern.

3. Excluded Assets. Notwithstanding any provision of this Agreement of Transfer and Assumption to the contrary, the properties and assets (the "Excluded Assets") described in the attached Exhibit A, which by this reference is incorporated herein, shall be excepted herefrom and reserved to and retained by Cyprus.

4. Assumed Liabilities. Subject to the terms and conditions of this Agreement, in connection with its purchase of the Transferred Assets at the Newco Closing, Newco shall assume and shall perform, pay and discharge all of the liabilities or obligations, whether known, unknown, contingent or otherwise primarily relating to the Transferred Assets, including, without limitations, liabilities and obligations, whether known, unknown, contingent or otherwise arising out of transactions or events occurring on or prior to the Closing and relating primarily to the Transferred Assets (the "Assumed Liabilities").

5. Excluded Liabilities. Notwithstanding any provision of this Agreement of Transfer and Assumption to the contrary, Newco shall not be responsible for and shall not assume any of the following liabilities or obligations, whether known, unknown, contingent or otherwise (the "Excluded Liabilities") which are hereby expressly excluded from the definition of Assumed Liabilities: (i) any liabilities or obligations arising out of or relating to the Excluded Assets, (ii) any liabilities or obligations arising out of the Montana net proceeds tax liability, (iii) any liabilities arising out of or relating to properties disposed of by the Talc Business prior to the Newco Closing, and (iv) any liabilities or obligations (including costs and expenses associated therewith) arising from any litigation arising out of or relating to the operation of the businesses of the Companies prior to the Closing as to which Buyer has given written notice to Seller within one year of the Closing Date.

6. Non-Assignable Contracts. Nothing herein shall be deemed to constitute an assignment or an attempt to assign any contract, agreement, lease, license, permit, order, or commitment or understanding to which Cyprus is a party if the attempted assignment thereof without the consent of the other party thereto would constitute a breach thereof or affect in any way the rights of Cyprus thereunder and such consent has not been given; but Cyprus will cooperate with Newco in any reasonable arrangement designed

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to provide for Newco the benefits under any such contract or agreement including, without limitation, the enforcement, for the benefit of Newco, of any and all rights of Cyprus against such other party or parties thereto arising out of any breach or cancellation thereof by such other party or parties or otherwise.

7. Closing. The closing of the transactions provided for herein (the "Newco Closing") will take place at the offices of Sullivan & Cromwell at 125 Broad Street, New York, New York, immediately prior to the Closing provided for in the Stock Purchase Agreement.

8. Transactions at the Newco Closing. (a) At the Newco Closing, Cyprus will deliver to Newco the following:

(i) stock certificates evidencing the Shares, in each case endorsed in blank or with an executed blank stock power attached, and in form suitable for transfer of valid title thereto to Newco or its assigns, free and clear of any Encumbrances;

(ii) such deeds, bills of sale, endorsements, certificates, instruments of assignment and such other instruments of conveyance and transfer reasonably satisfactory in form and substance to vest in Newco good and marketable title to the Transferred Assets, in each case, free and clear of any Encumbrances other than Permitted Exceptions;

(iii) such instrument of retention reasonably satisfactory in form and substance as shall be necessary for Cyprus to retain the Excluded Liabilities.

(b) At the Newco Closing, Newco will deliver to Cyprus the following:

(i) such instruments of assumption reasonably satisfactory in form and substance to Cyprus as shall be necessary for Newco to assume all of the Assumed Liabilities;

(ii) Stock certificates evidencing all shares of Common Stock of Newco.

9. Representations and Warranties of Cyprus. Cyprus hereby represents and warrants to Newco that it has good and marketable title or possessory rights to all of the Transferred Assets and that at the Newco Closing, good and

REDACTED DOCUMENT

marketable title or possessory rights to all of the Transferred Assets, free and clear of any Encumbrances other than Permitted Exceptions, will be transferred to Newco.

10. Attorney-in-Fact. Cyprus hereby makes, constitutes and appoints Newco the true and lawful attorney-in-fact of Cyprus, with full power of substitution, in the name and stead of Cyprus, but on behalf and for the benefit of Newco, to demand and receive any and all of the Transferred Assets, and to give receipts and releases for and in respect of the same, and any part thereof, and from time to time institute, prosecute, appear in, defend and appeal in the name of Cyprus, or otherwise, at the expense and for the benefit of Newco, any and all actions, suits and proceedings at law, in equity or otherwise, which Newco may deem proper in order to collect or reduce to possession any of the Transferred Assets, or enforce any claim or right of any kind hereby conveyed or assigned and transferred, or to resist or defend against any claim, or assertion relating to an Assumed Liability and to do all acts and things in relation to the Transferred Assets or the Assumed Liabilities which Newco shall deem desirable.

11. Mail. Cyprus further authorizes Newco, its successors and assigns, to receive and open all mail, telegrams and other communications, and all express and other packages addressed to Cyprus under the name of "Cyprus Industrial Minerals Company" and to retain such of the same as relate to the Transferred Assets and Newco hereby agrees to forward to Cyprus with reasonable dispatch all other mail, telegrams, communications, express and other packages addressed to Cyprus. The foregoing shall constitute a full authorization to the postal authorities, all telegraph and express companies, and all other persons to make delivery of such items to Newco, its successors and assigns.

12. Further Assurance. Upon written request of Newco, Cyprus shall from time to time execute and deliver to Newco, without further consideration, such other and further instruments of conveyance, assignment and transfer as Newco may reasonably request for the more effective conveyance, assignment and transfer to Newco of any of the Transferred Assets.

13. Indemnification. (a) Cyprus shall indemnify and hold Newco harmless from and against all Damages caused by, resulting or arising from (i) any Breach of the representations or warranties of Cyprus set forth in Section 9 hereof, or (ii) the Excluded Liabilities.

REDACTED DOCUMENT

(b) Newco shall indemnify and hold Cyprus harmless from and against all expenses, including reasonable legal expenses, incurred by Cyprus in any litigation against Newco in which Newco is found to have breached any of its obligations under this Agreement.

14. Miscellaneous. This Agreement of Transfer and Assumption shall be governed by, and construed in accordance with, the law of the State of New York without reference to choice of law principles, including all matters of construction, validity and performance. This Agreement of Transfer and Assumption contains the entire understanding of the parties hereto with respect to the subject matter contained herein, supersedes and cancels all prior agreements, negotiations, correspondences, undertakings and communications of the parties, oral or written, respecting such subject matter. This Agreement may be amended only by a written instrument executed by the parties. This Agreement may be executed in one or more counterparts and each counterpart shall be deemed to be an original.

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IN WITNESS WHEREOF, the parties have duly executed
this Agreement of Transfer and Assumption on the day and
year first above written.

CYPRUS TALC CORPORATION

By: 

CYPRUS MINES CORPORATION

By: 

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EXHIBIT A

Excluded Assets

1. The Hamm Underground Mine Property

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AMENDMENT TO AGREEMENT OF TRANSFER AND ASSUMPTION

AMENDMENT DATED AS OF JUNE ²⁴, 1992, TO AGREEMENT OF TRANSFER AND ASSUMPTION DATED JUNE 5, 1992, by and between Cyprus Talc Corporation, a Delaware corporation ("Newco"), and Cyprus Mines Corporation, a Delaware corporation ("Cyprus").

WHEREAS, on June 5, 1992, the parties entered into an Agreement of Transfer and Assumption (the "Transfer Agreement");

WHEREAS, Cyprus, Cyprus Minerals Company, a Delaware corporation, and RTZ America Inc., a Delaware corporation ("RTZ"), have entered into a Stock Purchase Agreement dated as of June 5, 1992 ("the Stock Purchase Agreement");

WHEREAS, with the recognition and acknowledgement of RTZ, the parties desire to make certain conforming changes to the Transfer Agreement to confirm the intent of the parties;

NOW THEREFORE, in consideration of the mutual covenants set forth herein and in the Transfer Agreement:

1. The Transfer Agreement is hereby amended on page 3, Section 5, line 14, by deleting "litigation" after "any" and by inserting "third party claims (other than employee claims for which RTZ, referred to as "Buyer" in the Stock Purchase Agreement, is responsible under Section 7.4 of the Stock Purchase Agreement)" after "any".

2. The Transfer Agreement is hereby amended on page 4, Section 7, line 5, by inserting "and shall be effective immediately prior to the close of business on the Closing Date" after "Agreement".

3. The Transfer Agreement is hereby amended on page 4, Section 8(a)(ii), by deleting the last three lines of the section and inserting in lieu thereof "all right, title and interest of Cyprus in the Transferred Assets;" after "Newco".

4. Section 9 of the Transfer Agreement is hereby amended by deleting the existing Section 9 and inserting in lieu thereof the following:

" 9. Representations and Warranties of Cyprus.

(a) Cyprus hereby represents and warrants to Newco that it has good and marketable title to the Shares and that at the Newco Closing, good and marketable title to the

REDACTED DOCUMENT

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Shares, free and clear of any Encumbrances will be transferred to Newco.

(b) Cyprus hereby represents and warrants to Newco that, to the "Knowledge of Cyprus" (as such term is defined with respect to Seller in the Stock Purchase Agreement), it has good and marketable title or possessory rights to all of the Transferred Assets (other than the Shares covered in (a) above) and that at the Newco Closing, good and marketable title or possessory rights to all such Transferred Assets, free and clear of any Encumbrances other than those described in Section 5.8 or in Schedule 5.8 of the Stock Purchase Agreement, will be transferred to Newco.

(c) The representations and warranties contained in Section 9(a) hereof shall survive the Newco Closing until the expiration of the limitation period under the applicable statutes of limitations (or any extension thereof) and thereafter shall expire except with respect to breaches or violations theretofore specified in writing to Cyprus by Newco, RTZ or their successors. The representations and warranties contained in Section 9(b) hereof shall survive for a period of one year after the Newco Closing and shall thereafter expire except with respect to breaches and violations theretofore specified in writing to Cyprus by Newco, RTZ or their successors."

5. The Transfer Agreement is hereby amended on page 5, Section 13(a), line 5, by inserting ", provided, however, that with respect to claims made pursuant to (i) of this Section 13(a), the limitations set forth in Section 11.4 of the Stock Purchase Agreement shall apply to all such claims and, in applying such limitations, such claims shall be added to all other claims made against Cyprus (referred to as "Seller" in the Stock Purchase Agreement) or Cyprus Minerals Company pursuant to Section 11.4 of the Stock Purchase Agreement" after "Liabilities".

6. The Transfer Agreement is hereby amended on page 6 by renumbering Section 14 to become Section 15 and inserting a new Section 14 as follows:

" 14. Taxes. Cyprus shall be liable for all transfer, sales, use or other similar taxes arising under any state, local or foreign law from the sale and transfer of the Transferred Assets to Newco."

REDACTED DOCUMENT


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7. This Amendment may be executed in one or more counterparts and each counterpart shall be deemed to be an original.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement of Transfer and Assumption on the day and year first above written.

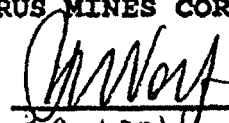
CYPRUS TALC CORPORATION

By:


G.J. Malys, Senior Vice President

CYPRUS MINES CORPORATION

By:


P.C. Wolf, President

REDACTED DOCUMENT

REDACTED DOCUMENT

SECOND AMENDMENT TO AGREEMENT OF
TRANSFER AND ASSUMPTION

SECOND AMENDMENT DATED AS OF JUNE 30, 1992, TO
AGREEMENT OF TRANSFER AND ASSUMPTION DATED JUNE 5, 1992, by
and between Cyprus Talc Corporation, a Delaware corporation
("Newco"), and Cyprus Mines Corporation, a Delaware
corporation ("Cyprus").

WHEREAS, on June 5, 1992, the parties entered into
an Agreement of Transfer and Assumption (the "Transfer
Agreement") and thereafter entered into an Amendment to the
Transfer Agreement;

WHEREAS, Cyprus, Cyprus Minerals Company, a
Delaware corporation, and RTZ America Inc., a Delaware
corporation ("RTZ"), have entered into a Stock Purchase
Agreement dated as of June 5, 1992 ("the Stock Purchase
Agreement") and thereafter entered into an Amendment to the
Stock Purchase Agreement;

WHEREAS, with the recognition and acknowledgement
of RTZ, the parties desire to make certain conforming
changes to the Transfer Agreement to confirm the intent of
the parties;

NOW THEREFORE, in consideration of the mutual
covenants set forth herein and in the Transfer Agreement:

1. The Transfer Agreement as amended is hereby
amended on page 3, Section 5, line 14, by deleting "third
party claims (other than employee claims for which RTZ,
referred to as "Buyer" in the Stock Purchase Agreement, is
responsible under Section 7.4 of the Stock Purchase
Agreement)" after "any" and by inserting "third party claims
(other than third party claims for which and to the extent
that Cyprus and Cyprus Minerals Company are not liable to
any Buyer Indemnitee under the Stock Purchase Agreement)"
after "any".

2. This Amendment may be executed in one or more
counterparts and each counterpart shall be deemed to be an
original.

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IN WITNESS WHEREOF, the parties have duly executed
this Second Amendment to the Agreement of Transfer and
Assumption on the day and year first above written.

Approved by:

CYPRUS TALC CORPORATION

RTZ AMERICA INC.

By: *[Signature]*
Senior Vice President

By: *[Signature]*
President

CYPRUS MINES CORPORATION

By: *[Signature]*
President

REDACTED DOCUMENT

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BILL OF SALE AND ASSIGNMENT

THIS IS A BILL OF SALE AND ASSIGNMENT executed this 30th day of June, 1992, by Cyprus Mines Corporation, a Delaware corporation ("Seller"), pursuant to Section 8(a)(ii) of the Agreement of Transfer and Assumption dated as of June 5, 1992 as amended (the "Agreement"), by and between Seller and Cyprus Talc Corporation, a Delaware corporation ("Buyer"). Capitalized terms used herein and not otherwise defined herein have the same meaning ascribed to them in the Agreement.

INTENDING TO BE LEGALLY BOUND and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, conveys, assigns, transfers and delivers to Buyer, its successors and assigns, all of Seller's right, title, and interest in and to all of the Transferred Assets.

To the extent that any provision of this Bill of Sale and Assignment is inconsistent with the Agreement, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale and Assignment to be executed by its duly authorized officer as of the date first above written.

CYPRUS MINES CORPORATION,
a Delaware corporation

BY: 

Name: P. C. Wolf

Title: President

REDACTED DOCUMENT

REDACTED DOCUMENT

ASSIGNMENT OF TRADEMARKS AND TRADENAMES

THIS IS AN ASSIGNMENT OF TRADEMARKS AND TRADENAMES executed this 30th day of June, 1992 by Cyprus Mines Corporation, a Delaware corporation ("Seller"), pursuant to Section 8(a)(ii) of the Agreement of Transfer and Assumption dated as of June 5, 1992 as amended (the "Agreement"), by and between Seller and Cyprus Talc Corporation, a Delaware corporation ("Buyer").

INTENDING TO BE LEGALLY BOUND and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, conveys, assigns, transfers and delivers to Buyer all of its legal or beneficial right, title and interest in and to all trademarks, trademark applications, service marks and tradenames, including all goodwill associated therewith, that are specified on Exhibit A hereto, for Buyer's own use and enjoyment and for the use and enjoyment of its successors and assigns, as fully and entirely as the same would have been held and enjoyed by Seller if this sale, assignment and transfer had not been made.

To the extent any provision of this Assignment of Trademarks and Tradenames is inconsistent with the Agreement, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, Seller has caused this Assignment of Trademarks and Tradenames to be executed by its duly authorized officer as of the date first above written.

CYPRUS MINES CORPORATION,
a Delaware corporation

BY: 

Name: P. G. Wolf
Title: President

REDACTED DOCUMENT

Exhibit A
Page 1

TRADEMARKS

<u>Cyprus Party</u>	<u>Trademark</u>	<u>Country/Number</u>	<u>Date Granted</u>
Cyprus Mines Corporation	AC CLAY	U.S.A. - No. 787,316	03/31/84
Cyprus Mines Corporation	ADSORBOL	U.S.A. - No. 437,025	05/09/47
Cyprus Mines Corporation	ALTALC	U.S.A. - No. 1,271,407	03/27/84
Cyprus Mines Corporation	ASPEN	U.S.A. - No. 1,276,609	05/08/84
Cyprus Mines Corporation	ATOMITE	U.S.A. - No. 415,469	09/18/85
Cyprus Mines Corporation	BARIMITE	U.S.A. - No. 1,244,825	07/12/83
Cyprus Mines Corporation	CYPRUFIL	U.S.A. - No. 1,276,607	05/08/84
Cyprus Mines Corporation	CYPRUCAST	U.S.A. - No. 1,205,102	08/17/83
Cyprus Minerals Company	CIMFLX	U.S.A. - No. 74/144,440	*
Cyprus Mines Corporation	DRIKALITE	U.S.A. - No. 1,244,041	07/05/83
Cyprus Mines Corporation	DURAMITE	U.S.A. - No. 1,246,713	08/03/83
Cyprus Mines Corporation	FURNACE CREEK	U.S.A. - No. 1,276,606	05/08/84
Cyprus Mines Corporation	KOTAMITE	U.S.A. - No. 1,083,829	04/23/86
Cyprus Mines Corporation	MISTROBRITE	U.S.A. - No. 886,957	03/03/70
Cyprus Mines Corporation	MISTRON	United Kingdom - No. 888,418	08/24/84
Cyprus Mines Corporation	MISTRON	Greece - No. 32,090	08/13/84
Cyprus Mines Corporation	MISTRON	France - No. 83,257	08/12/84
Cyprus Mines Corporation	MISTRON	Finland - No. 46,340	03/05/86
Cyprus Mines Corporation	MISTRON	Canada - No. 139,280	02/19/86
Cyprus Mines Corporation	MISTRON	Benelux - No. 71,923	10/28/71
Cyprus Mines Corporation	MISTRON	Belgium - No. 102,577	08/12/84
Cyprus Mines Corporation	MISTRON	Denmark - No. 3673/64	11/18/84
Cyprus Mines Corporation	MISTRON	Japan - No. 552,002	06/07/60
Cyprus Mines Corporation	MISTRON	Mexico - No. 170,002 (abandoned)	11/11/84
Cyprus Mines Corporation	MISTRON	Netherlands - No. 153,884	08/03/84
Cyprus Mines Corporation	MISTRON	U.S.A. - No. 534,073	11/28/50
Cyprus Mines Corporation	MISTRON	Australia - No. A-189,168	07/29/84
Cyprus Mines Corporation	MISTRON	Australia - No. 53,206	07/27/84
Cyprus Mines Corporation	MISTRON	West Germany - No. 819,565	05/16/86
Cyprus Mines Corporation	MISTRON	South Korea - No. 20880	01/13/71
Cyprus Mines Corporation	MISTRON	Spain - No. 452,784	07/29/84
Cyprus Mines Corporation	MISTRON	Sweden - No. 199,404	*
Cyprus Mines Corporation	MISTRON	Switzerland - No. 205,871	11/03/84
Cyprus Mines Corporation	MISTRON	Italy - No. 83,257	08/12/84
Cyprus Mines Corporation	MISTRON	Norway - No. 68,025	05/15/85
Cyprus Mines Corporation	MISTRON CASCADE	U.S.A. - No. 74,080,117	*
Cyprus Mines Corporation	MISTRON CYPRUSBOND	U.S.A. - No. 1,271,408	03/27/84
Cyprus Mines Corporation	MISTRON CYPRUSPERSE	U.S.A. - No. 1,271,405	03/27/84
Cyprus Mines Corporation	MISTRON FROST	U.S.A. - No. 1,272,268	03/03/84
Cyprus Mines Corporation	MISTRON SPRAY	U.S.A. - No. 1,330,332	*
Cyprus Mines Corporation	MISTRON SUPER FROST	U.S.A. - No. 1,271,403	03/27/84
Cyprus Mines Corporation	MISTRON SUPER VAPOR	U.S.A. - No. 1,331,487	*

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REDACTED DOCUMENT

Exhibit A
Page 2

<u>Cyprus Party</u>	<u>Trademark</u>	<u>Country/Number</u>	<u>Date Granted</u>
Cyprus Mines Corporation	MISTRON ULTRAMIX	U.S.A. - No. 1,272,287	03/03/84
Cyprus Mines Corporation	MISTRON VAPOR	Japan - No. 1,248,300	
Cyprus Mines Corporation	MISTRON ZETA PLUS	Registration pending	*
Cyprus Mines Corporation	MONOBLEND	U.S.A. - No. 1,271,408	03/27/84
Cyprus Mines Corporation	SIERRALITE	U.S.A. - No. 1,271,401	03/27/84
Cyprus Mines Corporation	SIERRA WHITE	U.S.A. - No. 1,278,371	05/29/84
Cyprus Mines Corporation	SILVERBOW	U.S.A. - No. 1,271,399	03/27/84
Cyprus Mines Corporation	SNOWFLAKE WHITE	U.S.A. - No. 1,248,714	08/02/83
Cyprus Mines Corporation	STEAWHITE	U.S.A. - No. 1,271,400	03/27/84
Cyprus Mines Corporation	SUPERCOAT	U.S.A. - No. 1,244,040	07/05/83
Cyprus Mines Corporation	SUPERMITE	U.S.A. - No. 1,063,678	*
Cyprus Mines Corporation	SUPRA	U.S.A. - No. 1,270,450	03/20/84
Cyprus Mines Corporation	SUPRAFINO	U.S.A. - No. 1,275,683	05/01/84
Cyprus Mines Corporation	UNITED SIERRA	U.S.A. - No. 12,488	08/22/86
Cyprus Mines Corporation	PYROPAQUE	U.S.A. - No. 807,429	04/26/86
Cyprus Mines Corporation	SIERRA	U.S.A. - No. 197,812	03/29/83
Cyprus Mines Corporation	SUPREME	*	*
Cyprus Mines Corporation	YELLOWSTONE TALC	U.S.A. - No. 589,928	05/18/54
Cyprus Mines Corporation	MISTRON SPRAY	U.S.A. - No. 1,330,322	04/18/85
Cyprus Mines Corporation	ULTRAMITE	*	*
Cyprus Mines Corporation	MISTROCARB	S/N 380,779 (expired)	08/19/82
Cyprus Mines Corporation	STELLAR	U.S.A. - No. 1,630,531	01/08/91

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Exhibit A
Page 3

SCHEDULE 5.15

DIMTA, S.A.

Trademark 1.185.098/1 "TALCOLIVA", applied for on 13th March 1987 and granted on 20th September 1989 for Class 3rd: Talc Products.

REDACTED DOCUMENT

SUPPLEMENT

TRADEMARKS

<u>Cyprus Party</u>	<u>Trademark</u>	<u>Country/Number</u>	<u>Date Granted</u>
Cyprus Mines Corporation	AC CLAY	U.S.A. - No. 767,316	03/31/64
Cyprus Mines Corporation	ADSORBOL	U.S.A. - No. 437,025	05/09/47
Cyprus Mines Corporation	ALTALC	U.S.A. - No. 1,271,407	03/27/84
Cyprus Mines Corporation	ASPEN	U.S.A. - No. 1,276,609	05/08/84
Cyprus Mines Corporation	ATOMITE	U.S.A. - No. 416,469	09/18/65
Cyprus Mines Corporation	BARIMITE	U.S.A. - No. 1,244,925	07/12/83
Cyprus Mines Corporation	CYPRUFIL	U.S.A. - No. 1,276,607	05/08/84
Cyprus Mines Corporation	CYPRUCAST	U.S.A. - No. 1,205,102	08/17/83
Cyprus Minerals Company	CIMFLX	U.S.A. - No. 74/144,440	03/04/91
Cyprus Mines Corporation	DRIKALITE	U.S.A. - No. 1,244,041	07/05/83
Cyprus Mines Corporation	DURAMITE	U.S.A. - No. 1,246,713	08/03/83
Cyprus Mines Corporation	FURNACE CREEK	U.S.A. - No. 1,276,605	05/08/84
Cyprus Mines Corporation	KOTAMITE	U.S.A. - No. 1,063,629	04/23/86
Cyprus Mines Corporation	MISTROBRITE	U.S.A. - No. 886,957	03/03/70
Cyprus Mines Corporation	MISTROCARB	S/N 380,779 (expired)	08/19/82
Cyprus Mines Corporation	MISTRON	United Kingdom - No. 868,418	08/24/64
Cyprus Mines Corporation	MISTRON	Greece - No. 32,090	08/13/64
Cyprus Mines Corporation	MISTRON	France - No. 83,257	08/12/64
Cyprus Mines Corporation	MISTRON	Finland - No. 46,340	03/05/66
Cyprus Mines Corporation	MISTRON	Canada - No. 139,280	02/19/65
Cyprus Mines Corporation	MISTRON	Benelux - No. 71,923	10/28/71
Cyprus Mines Corporation	MISTRON	Belgium - No. 102,577	08/12/64
Cyprus Mines Corporation	MISTRON	Denmark - No. 3673/64	11/18/64
Cyprus Mines Corporation	MISTRON	Japan - No. 552,002	06/07/60
Cyprus Mines Corporation	MISTRON	Mexico - No. 170,002 (abandoned)	11/11/64
Cyprus Mines Corporation	MISTRON	Netherlands - No. 153,884	08/03/64
Cyprus Mines Corporation	MISTRON	U.S.A. - No. 534,073	11/28/50
Cyprus Mines Corporation	MISTRON	Australia - No. A-189,166	07/29/64
Cyprus Mines Corporation	MISTRON	Australia - No. 53,206	07/27/64
Cyprus Mines Corporation	MISTRON	West Germany - No. 819,565	05/16/66
Cyprus Mines Corporation	MISTRON	South Korea - No. 20980	01/13/71
Cyprus Mines Corporation	MISTRON	Spain - No. 452,784	07/29/64
Cyprus Mines Corporation	MISTRON	Sweden - No. 199,404	01/17/86
Cyprus Mines Corporation	MISTRON	Switzerland - No. 205,871	11/03/64
Cyprus Mines Corporation	MISTRON	Italy - No. 83,257	08/12/64
Cyprus Mines Corporation	MISTRON	Norway - No. 66,025	05/15/65
Cyprus Mines Corporation	MISTRON CASCADE	U.S.A. - No. 74/080,117	07/20/90
Cyprus Mines Corporation	MISTRON CYPRUSBOND	U.S.A. - No. 1,271,408	03/27/84
Cyprus Mines Corporation	MISTRON CYPRUSPERSE	U.S.A. - No. 1,271,405	03/27/84
Cyprus Mines Corporation	MISTRON FROST	U.S.A. - No. 1,272,268	03/03/84
Cyprus Mines Corporation	MISTRON SPRAY	U.S.A. - No. 1,330,322	04/16/85
Cyprus Mines Corporation	MISTRON SUPER FROST	U.S.A. - No. 1,271,403	03/27/84
Cyprus Mines Corporation	MISTRON SUPER VAPOR	U.S.A. - No. 1,331,497	04/23/85

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REDACTED DOCUMENT

<u>Cyprus Party</u>	<u>Trademark</u>	<u>Country/Number</u>	<u>Date Granted</u>
Cyprus Mines Corporation	MISTRON ULTRAMIX	U.S.A. - No. 1,272,267	03/03/84
Cyprus Mines Corporation	MISTRON VAPOR	Japan - No. 1,248,300	02/10/77
Cyprus Mines Corporation	MISTRON ZETA PLUS	Registration pending	
Cyprus Mines Corporation	MONOBLEND	U.S.A. - No. 1,271,406	03/27/84
Cyprus Mines Corporation	PYROPAQUE	U.S.A. - No. 807,429	04/26/66
Cyprus Mines Corporation	SIERRALITE	U.S.A. - No. 1,271,401	03/27/84
Cyprus Mines Corporation	SIERRA	U.S.A. - No. 197,912	03/29/83
Cyprus Mines Corporation	SIERRA WHITE	U.S.A. - No. 1,279,371	05/29/84
Cyprus Mines Corporation	SILVERBOW	U.S.A. - No. 1,271,399	03/27/84
Cyprus Mines Corporation	SNOWFLAKE WHITE	U.S.A. - No. 1,246,714	08/02/83
Cyprus Mines Corporation	STEAWHITE	U.S.A. - No. 1,271,400	03/27/84
Cyprus Mines Corporation	STELLAR	U.S.A. - No. 1,630,531	01/08/91
Cyprus Mines Corporation	SUPERCOAT	U.S.A. - No. 1,244,040	07/05/83
Cyprus Mines Corporation	SUPERMITE	U.S.A. - No. 1,063,678	04/19/77
Cyprus Mines Corporation	SUPRA	U.S.A. - No. 1,270,450	03/20/84
Cyprus Mines Corporation	SUPRAFINO	U.S.A. - No. 1,275,663	05/01/84
Cyprus Mines Corporation	SUPREME	U.S.A. - No. 1,273,240	04/10/84
Cyprus Mines Corporation	ULTRAMITE		
Cyprus Mines Corporation	UNITED SIERRA	U.S.A. - No. 12,498	08/22/66
Cyprus Mines Corporation	YELLOWSTONE TALC	U.S.A. - No. 589,928	05/18/54
MTA, S.A.	TALCÓLIVA	Spain - No. 1.185.098/1	09/20/89

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ASSIGNMENT OF PATENTS

THIS IS AN ASSIGNMENT OF PATENTS executed this 30th day of June, 1992
by Cyprus Mines Corporation, a Delaware corporation ("Seller"), pursuant to Section
8(a)(ii) of the Agreement of Transfer and Assumption dated as of June 5, 1992 as
amended (the "Agreement"), by and between Seller and Cyprus Talc Corporation, a
Delaware corporation ("Buyer").

INTENDING TO BE LEGALLY BOUND and for good and valuable consideration,
the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells,
conveys, assigns, transfers and delivers to Buyer all of its legal or beneficial right, title
and interest in and to all patents, exclusive or non-exclusive rights or interests in
patents, and patent applications, including all goodwill associated therewith, that are
specified on Exhibit A hereto, for Buyer's own use and enjoyment and for the use and
enjoyment of its successors and assigns, to the full term of all the letters patent
relating thereto, as fully and entirely as the same would have been held and enjoyed
by Seller if this sale, assignment and transfer had not been made.

To the extent any provision of this Assignment of Patents is inconsistent with
the Agreement, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, Seller has caused this Assignment of Patents to be
executed by its duly authorized officer as of the date first above written.

CYPRUS MINES CORPORATION,
a Delaware corporation

BY: 

Name: P. C. Wolf
Title: President

REDACTED DOCUMENT

Exhibit A
Page 1

PATENTS

<u>Company</u>	<u>Patent</u>	<u>Country/Number</u>	<u>DATE GRANTED</u>
Cyprus Industrial Minerals Company	An Amino Acid Coated Mineral Powder Composition and a Method for Making the same	U.S.A. - 07/824,580	
Cyprus Industrial Minerals Company	Centrifugal Particle Classifier Having Uniform Influx Distributor	U.S.A. - *	
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	Australia - No. 23168/88	05/23/91
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	Brazil - No. PI 8807707	05/17/89
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	Canada - No. 599,916 and 577,321	09/14/89
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	China - No. 89104404.3 and 88107159	05/16/89
Cyprus Industrial Minerals	Method and Apparatus for Friction Sorting of Particular Materials	Egypt - No. 243/89	05/17/89
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	Europe - No. 88907635.4	
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	Finland - *	
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	France - No. 8911027	

PAGE 4

*patent number unknown

REDACTED DOCUMENT

Exhibit A
Page 2

<u>Cyprus Party</u>	<u>Patent</u>	<u>Country/Number</u>	<u>Date Granted</u>
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	India - Nos. 821/Cal/88 382/Cal/89 383/Cal/89	10/04/88
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	Italy - No. *	
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	Japan - No. 50712/88	08/18/88
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	Norway - No. 185/182	01/08/89
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	South Korea - No. 89-700872	05/17/89
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	Spain - No. 2009039	06/27/89
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	Turkey - No. 45527/88	10/19/89
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	U.S.A. - No. 5,089,346	
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	WO - No. 8,902,328	
Cyprus Industrial Minerals Company	Method and Apparatus for Friction Sorting of Particular Materials	EP - No. 335,922	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulp in Papermaking	Brazil - No. PI 8904545	

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*Patent number unknown

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Exhibit A
Page 3

<u>Cyprus Party</u>	<u>Patent</u>	<u>Country/Number</u>	<u>Date Granted</u>
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Denmark - No. 4412/89	01/06/89
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Greece - No. 890100006	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Argentina - No. 312935	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Australia - No. 29373/89	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Chile - No. 009/89	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Europe - No. 89901770,1-2304	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Finland - No. 894147	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Italy - No. 88/02814	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Japan - No. 501645/89	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Mexico - No. 14459	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	New Zealand - No. 277,526	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulping in Papermaking	Norway - No. 893578	

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Exhibit A
Page 4

<u>Cyprus Party</u>	<u>Patent</u>	<u>Country/Number</u>	<u>Date Granted</u>
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulp in Papermaking	Portugal - No. 89397	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulp in Papermaking	South Africa - No. 890038	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulp in Papermaking	Spain - No. 2010072	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulp in Papermaking	U.S.A. - No. 4,864,955	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulp in Papermaking	WO - No. B,906,294	
Cyprus Industrial Minerals Company	Method of Reducing Pitch and Pulp in Papermaking	EP - No. 374,196	
Cyprus Industrial Minerals Company	Rubber Composition Comprising Phyllosilicate Salts	U.S.A. - No. 4,431,755	
Cyprus Industrial Minerals Company	Separation Method for Different Materials Using Turntable	U.S.A. - *	
Cyprus Industrial Minerals Company	Separation Method for Different Materials Using Turntable	ES - No. 2,011740	
Cyprus Industrial Minerals Company	Separation Method for Different Materials Using Turntable	BR - No. 8,904,173	
Cyprus Industrial Minerals Company	Separation Method for Different Materials Using Turntable	FR - No. 2,635,475	
Cyprus Industrial Minerals Company	Separation Method for Different Materials Using Turntable	AU - No. 8,934,837	

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Exhibit A
Page 5

<u>Cyprus Party</u>	<u>Patent</u>	<u>Country/Number</u>	<u>Date Granted</u>
Cyprus Industrial Minerals Company	Separation Method for Different Materials Using Turntable	CN - No. 1,040,335	
Cyprus Industrial Minerals Company	Small Particle Separator	U.S.A. - No. 07/588,202	
Cyprus Industrial Minerals Company	Small Particle Separator	Egypt - No. *	
Cyprus Industrial Minerals Company	Small Particle Separator	Brazil - No. *	
Cyprus Industrial Minerals Company	Small Particle Separator	Brazil - No. *	
Cyprus Industrial Minerals Company	Small Particle Separator	Europe - No. *	
Cyprus Industrial Minerals Company	Small Particle Separator	India - No. *	
Cyprus Industrial Minerals Company	Small Particle Separator	South Korea - No. *	
Cyprus Industrial Minerals Company	Small Particle Separator	Norway - No. *	
Cyprus Industrial Minerals Company	Small Particle Separator	Finland - No. *	
Cyprus Industrial Minerals Company	Small Particle Separator	Australia - No. *	
Cyprus Industrial Minerals Company	Small Particle Separator	China - No. *	
Cyprus Mines Corporation	Beneficiation of New York State Talc	U.S.A. - No. 3,837,582	
Cyprus Mines Corporation	Beneficiated Talc as Filler	U.S.A. - No. 4,814,019	
Cyprus Mines Corporation	Removing Tremolite	U.S.A. - No. 3,965,241	
Cyprus Mines Corporation	Rendering Montana Talc Suitable for use as fillers	U.S.A. - No. 4,931,493	

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REDACTED DOCUMENT

SUPPLEMENT PATENTS			
CYPRUS PARTY	PATENT	COUNTRY/NUMBER	DATE GRANTED
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Belgium - No. 883,648	06/30/80
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Canada - No. 1188513	06/30/80
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Europe - No. 0041756	01/18/85
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	France - No. 0041756	01/18/85
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Great Britain - No. 00417567	01/18/85
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Italy - No. 004176	01/18/85
Cyprus Industrial Minerals	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Japan - No. 824049	10/24/81
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Korea - No. 18339	02/01/85
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Luxembourg - No. 0041756	01/18/85
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Netherlands - No. 0041756	01/18/85
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	New Zealand - No. 197297	05/15/84
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Sweden - No. 0041756	01/18/85
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	Switzerland - No. 0041756	01/18/85

* Unknown

REDACTED DOCUMENT

PATENTS			
CYPRUS PARTY	PATENT	COUNTRY/NUMBER	DATE GRANTED
Cyprus Industrial Minerals Company	New Composition for the Color Developing Coating in Pressure Sensitive Carbonless Copying Systems	West Germany - No. 0041756	01/18/85
Cyprus Industrial Minerals Company	Rubber Composition Comprising Phyllosilicate Minerals, Salines, and Quaternary Ammonium Salts	Canada - No. 490,980	*
Cyprus Industrial Minerals Company	Rubber Composition and Method of Incorporating Carbon Black and a Quaternary Ammonium Coupling Agent Salt into Natural Rubber Containing Compositions	U.S.A. - No. 4,598,105	07/01/86
Cyprus Industrial Minerals Company	Rubber Composition and Method of Incorporating Carbon Black and a Quaternary Ammonium Coupling Agent Salt into Natural Rubber Containing Compositions	U.S.A. - No. 4,602,052	07/22/86
Cyprus Industrial Minerals Company	Pharmaceutical Tablet Matrix Containing Talc as a Major Component	U.S.A. - No. SN264,377	10/31/88

REDACTED DOCUMENT

REDACTED DOCUMENT

ASSUMPTION AGREEMENT

ASSUMPTION AGREEMENT dated June 30, 1992 by and between Cyprus Mines Corporation, a Delaware corporation ("Seller") and Cyprus Talc Corporation, a Delaware corporation ("Buyer"). All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement of Transfer and Assumption dated as of June 5, 1992 as amended, by and among Seller and Buyer (the "Agreement").


WHEREAS, pursuant to Sections 4 and 8(b)(i) of the Agreement, Buyer has agreed to assume the Assumed Liabilities;

NOW, THEREFORE, in consideration of the foregoing, Buyer hereby agrees, subject to the terms and conditions set forth in the Agreement, to assume, perform, pay and discharge the Assumed Liabilities.


To the extent any provision of this Assumption Agreement is inconsistent with the Agreement, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Assumption Agreement to be duly executed on the date first above written.

CYPRUS MINES CORPORATION,
a Delaware corporation

BY: 
Name: P. C. Wolf
Title: President

CYPRUS TALC CORPORATION,
a Delaware corporation

BY: 
Name: G. J. Malys
Title: Senior Vice President

REDACTED DOCUMENT

REDACTED DOCUMENT

ASSUMPTION AND RETENTION AGREEMENT

ASSUMPTION AND RETENTION AGREEMENT dated June 30, 1992 by and between Cyprus Mines Corporation, a Delaware corporation ("Seller") and Cyprus Talc Corporation, a Delaware corporation ("Buyer"). All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement of Transfer and Assumption dated as of June 5, 1992 as amended, by and among Seller and Buyer (the "Agreement").

WHEREAS, pursuant to Sections 5 and 8(a)(iii) of the Agreement, Seller has agreed to retain or assume the Excluded Liabilities;

NOW, THEREFORE, in consideration of the foregoing, Seller hereby agrees, subject to the terms and conditions set forth in the Agreement, to retain or assume the Excluded Liabilities.

To the extent any provision of this Assumption and Retention Agreement is inconsistent with the Agreement, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Assumption and Retention Agreement to be duly executed on the date first above written.

CYPRUS MINES CORPORATION,
a Delaware corporation

BY: 

Name: P. G. Wolf
Title: President

CYPRUS TALC CORPORATION,
a Delaware corporation

BY: 

Name: G. J. Malys
Title: Senior Vice President

REDACTED DOCUMENT

REDACTED DOCUMENT

State of Delaware

PAGE 1



Office of Secretary of State

I, MICHAEL RATCHFORD, SECRETARY OF STATE OF THE STATE OF
DELAWARE. DO HEREBY CERTIFY RTZ AMERICA INC. IS DULY INCORPORATED
UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING
AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS
OFFICE SHOW, AS OF THE DATE SHOWN BELOW.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE
BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES
HAVE BEEN PAID TO DATE.

A A A A A A A A A



722177006

Michael Ratchford

Michael Ratchford, Secretary of State

AUTHENTICATION: 3498001

DATE: 06/25/1992

REDACTED DOCUMENT

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CYPRUS MINES CORPORATION

Consent Action by the Board

June 30, 1992

We, the undersigned, being all of the Directors of Cyprus Mines Corporation (the "Corporation"), do hereby waive call, notice, meeting, and vote and do hereby consent to, confirm, and verify the following corporate actions pursuant to authority vested by the Delaware Corporation Law, Section 141(f):

RESOLVED, that this Corporation hereby transfer, effective immediately prior to the close of business on the Closing Date as defined in the Stock Purchase Agreement dated June 5, 1992 among Cyprus Mines Corporation ("Cyprus"), Cyprus Minerals Company, and RTZ America, Inc., as amended, (the "Agreement"), a copy of which is attached hereto as Exhibit A, to Cyprus Talc Corporation, a wholly owned subsidiary of this Corporation, as a contribution to the capital of Cyprus Talc Corporation, in accordance with the Agreement of Transfer and Assumption between Cyprus Talc Corporation and Cyprus Mines Corporation dated June 5, 1992, as amended (the "Transfer Agreement"), a copy of which is attached hereto as Exhibit B, all of Cyprus' right, title and interest in and to the assets, properties, rights and businesses of every type and description used primarily in or relating primarily to Cyprus' talc business (the "Talc Business"), whether real, personal and mixed, tangible or intangible, whether currently in use or idle, fixed or unfixed, accrued, absolute, contingent or otherwise, wherever located and including, without limitation, all of the right, title and interest of Cyprus in the assets listed in paragraphs [a] through [i] below (but excluding the Excluded Assets as defined in the Transfer Agreement):

- [a] Cyprus' record and beneficial ownership of all of the issued and outstanding shares of the capital stock of Cyprus Industrial Minerals Corporation, a Nevada corporation, and its subsidiaries, Mistrion Mineralien GmbH, a German corporation [REDACTED] and DIMTA, S.A., a Spanish corporation [REDACTED] Cyprus Windsor Minerals Corporation, a Vermont corporation and its subsidiary Cyprus Western Source Corporation, a California corporation; and Green Mountain Talc Corporation, a Delaware corporation; and Cyprus' record and beneficial ownership of [REDACTED] of the issued and outstanding shares of capital stock of Nihon Mistrion Company, Ltd., a Tokyo, Japan corporation (collectively, the "Shares");
- [b] The real property and mineral rights of the Talc Business and the records thereof;

REDACTED DOCUMENT

- [c] All current assets, including without limitation, all cash and, to the extent that the same may exist, all certificates of deposit, accounts receivable, claims, prepaid expenses, deferred charges, advances and deposits;
- [d] All talc inventories of finished products, work-in-progress and raw materials of the Talc Business;
- [e] All talc facilities and equipment of the Talc Business;
- [f] All business machines, furniture and fixtures, supplies, office equipment, vehicles and other tangible personal property used primarily in or relating primarily to the Talc Business;
- [g] All trademarks and other marks and, to the extent that the same may exist, all inventions, patents and any copyrights, and registrations thereof, all applications for any of the foregoing and all trade names;
- [h] All right, title and interest in, to and under all contracts, agreements, leases, licenses, permits, orders, commitments of understandings to which Cyprus is a party or entitled to any right or interest;
- [i] All trade secrets, processes, specifications, designs, drawings and technology which relate primarily to the Talc Business;
- [j] All contracts, books, records and other data relating primarily to the Talc Business;
- [k] All causes of action and claims of any kind of Cyprus against any other party related primarily to the Talc Business;
- [l] All other assets and rights of the Talc Business as a going concern;

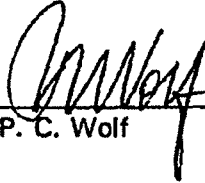
together with any and all liabilities whether known, unknown, contingent or otherwise related to the above-referenced items, with the exception of Excluded Liabilities as described in the Agreement; provided, however, that no such right, title, or interest described above shall be deemed to be conveyed hereof if any consent necessary to such conveyance, which consent shall be effective as of the effective date of such conveyance, shall not have been, or shall not be, obtained, or if such conveyance would result in forfeiture of the interest conveyed or in other significant monetary (non-tax) penalty; and further

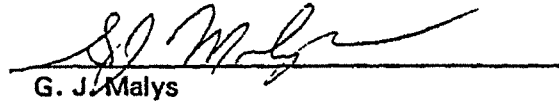
RESOLVED, that any prior transfer of the assets, properties, rights, and businesses to Cyprus Talc Corporation by this Corporation are hereby ratified, confirmed, and approved; and further

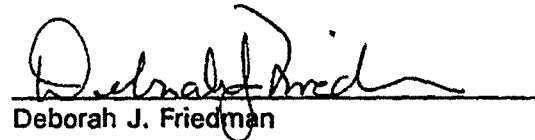
REDACTED DOCUMENT

RESOLVED, that the Transfer Agreement, as amended, is hereby ratified, confirmed and approved; and further

RESOLVED, that the President, any Senior Vice President, Vice President, the Secretary or any Assistant Secretary of this Corporation are hereby authorized, empowered and directed to convey the Shares to Cyprus Talc Corporation, and to execute and deliver such stock certificates, stock powers and other documents and to take all other steps which may be necessary or desirable in connection with such conveyance.

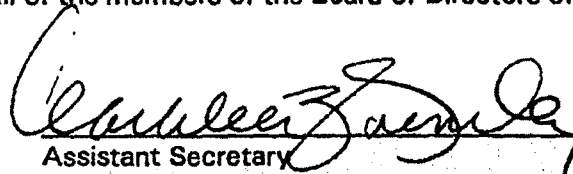


P. C. Wolf

G. J. Malys

Deborah J. Friedman

I hereby certify that the above signatories to this Consent Action by the Board of Cyprus Mines Corporation dated June 30, 1992, are all of the members of the Board of Directors of this Corporation on the date hereof.



Assistant Secretary

REDACTED DOCUMENT

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RTZ AMERICA INC.

Officer's Certificate

I, Arthur Glass, President of RTZ America Inc., a Delaware corporation ("RTZ"), pursuant to Section 8.3 of the Stock Purchase Agreement dated as of June 5, 1992, as amended (the "Purchase Agreement"), by and among RTZ, Cyprus Mines Corporation, a Delaware corporation, and Cyprus Minerals Company, a Delaware corporation, hereby certify that (i) each of the representations and warranties of RTZ contained in the Purchase Agreement are true in all material respects at and as of the date hereof with the same force and effect as though made at and as of the date hereof, except for changes permitted or contemplated by the Purchase Agreement and except to the extent that any representation or warranty is made as of a specified date, in which case such representation or warranty shall be true in all material respects as of such date, and (ii) RTZ have performed and complied in all material respects with all its undertakings and agreements required by the Purchase Agreement to be performed or complied with by RTZ prior to or on the date hereof.

IN WITNESS WHEREOF, I have hereunto signed my name as of June 30, 1992.



President

REDACTED DOCUMENT

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RTZ AMERICA INC.

Secretary's Certificate

and

Incumbency Certificate

The undersigned hereby certifies that he is the Secretary of RTZ America Inc., a Delaware corporation ("RTZ"), and that, as such, he is authorized to execute this Certificate on behalf of RTZ, and further certifies, as of immediately prior to the consummation of the transactions contemplated by the Stock Purchase Agreement dated as of June 5, 1992, as amended, (the "Purchase Agreement"), by and among RTZ, Cyprus Mines Corporation, a Delaware corporation, and Cyprus Minerals Company, a Delaware corporation, as follows:

(i) attached hereto as Exhibit A is a complete and correct copy of the resolutions of the Board of Directors of RTZ authorizing the execution and delivery of the Purchase Agreement and the consummation of the transactions contemplated thereunder;

(ii) the following person is a duly elected, qualified and acting officer of RTZ and the signature appearing opposite the name of such officer is his true signature:

<u>Name</u> . .	<u>Office</u>	<u>Signature</u>
Arthur Glass	President	<u>Arthur Glass</u>

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IN WITNESS WHEREOF, I have hereunto signed my name
as of June 30, 1992.

RTZ AMERICA INC.

By: Barry Grossman
Barry Grossman
Secretary

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Exhibit A

RESOLUTIONS
ADOPTED BY THE BOARD OF
RTZ AMERICA INC.
AT A SPECIAL MEETING
HELD ON JUNE 5, 1992

WHEREAS, Cyprus Mines Corporation, a Delaware Corporation ("Seller"), is the sole record and beneficial owner of all issued and outstanding shares of capital stock (the "Shares") of Cyprus Talc Corporation, a Delaware corporation ("Newco");

WHEREAS, Newco is the sole record and beneficial owner of all issued and outstanding shares of capital stock of Cyprus Industrial Minerals Corporation, a Nevada corporation, Cyprus Windsor Minerals Corporation, a Vermont corporation, and its subsidiary Cyprus Western Source Corporation, a California corporation, and Green Mountain Talc Corporation, a Delaware Corporation, and is the record and beneficial owner of [REDACTED] of the issued and outstanding shares of DIMTA S.A., a company organized under the laws of Spain and is the record and beneficial owner of [REDACTED] of the issued and outstanding shares of Nihon Mistron Company, a Tokyo, Japan corporation (collectively the "Other Companies"); and

WHEREAS, Seller desires to sell or cause the sale of, and the Corporation desires to purchase, the Shares;
NOW, THEREFORE, BE IT,

RESOLVED, that the Stock Purchase Agreement, together with the Schedules and Exhibits attached thereto (the "Agreement"), among Seller, Cyprus Minerals Company, a Delaware corporation ("Cyprus"), and the Corporation, in substantially the form distributed to directors at this meeting and to be included with the minutes of this meeting, providing for the purchase by the Corporation from Seller of the Shares, together with all transactions contemplated thereby, be and hereby are approved, with such changes as the President, the Secretary, the Treasurer or any Director (each an "Authorized Officer") of the Corporation may approve, such approval to be conclusively evidenced by the execution and delivery thereof; and

FURTHER RESOLVED, that each of the Authorized Officers be, and each such Authorized Officer hereby is, authorized to take, or cause the Corporation or any of its subsidiaries to take, any actions they deem necessary or appropriate in order to obtain any and all necessary permits, authorizations, orders and approvals under applicable statutes or regulations, including federal,

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state, local and foreign statutes or regulations, as may be required to carry out the transactions contemplated by the Agreement; and

FURTHER RESOLVED, that each of the Authorized Officers be, and each such Authorized Officer hereby is, authorized and directed to do and perform all such acts, deeds and things and to make, execute and deliver, or cause to be made, executed and delivered, all such applications, filings, agreements including the Agreement, documents, instruments or certificates in the name and on behalf of the Corporation as each such Authorized Officer may deem necessary or appropriate to effectuate or carry out fully the purpose and intent of these resolutions; and

FURTHER RESOLVED, that each of the Authorized Officers be, and each such Authorized Officer hereby is, authorized to execute and file any applications, certificates or other documents as may be necessary to carry out any one or more of the Agreements and the intent of the foregoing resolutions; and

FURTHER RESOLVED, that all actions heretofore taken by any officer or director of the Corporation in connection with, or with respect to, the matters referred to in the foregoing resolutions be and hereby are confirmed, ratified and approved in all respects.

REDACTED DOCUMENT

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OFFICER'S CERTIFICATE
CYPRUS MINES CORPORATION


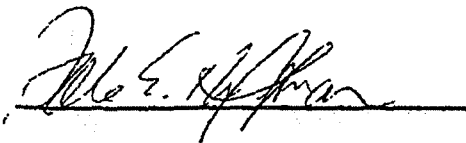
I, P. C. Wolf, President of Cyprus Mines Corporation, a Delaware corporation (herein called "Mines"), do hereby certify, pursuant to Section 12(c) of the European Stock Purchase Agreement (the "Agreement"), dated June 5, 1992 among Cyprus Mines Corporation and Talc da Luzenac S.A., as amended, as follows:

1. The representations and warranties of Mines referred to in Section 12(a) and 12(b) of the Agreement are true in all material respects except for changes permitted or contemplated by the Agreement and except to the extent that any representation or warranty is made as of a specified date, in which case such representation or warranty is true in all material respects as of such date, and except to the extent the untruthfulness of the representations and warranties in the aggregate would not constitute a material adverse change or unanticipated and undisclosed material liability previously unknown to RTZ America, Inc. which would have a material adverse effect on the talc business of the Companies (as defined in the Agreement) as a whole.
2. Mines has performed and complied in all material respects with all of its undertakings and agreements required by the Agreement to have been complied with by it except to the extent non-compliance in the aggregate would not have a material adverse effect on the talc business of the Companies (as defined in the Agreement) as a whole.

IN WITNESS WHEREOF, the undersigned has hereunto subscribed his name and affixed the seal of Cyprus Mines Corporation this 30th day of June, 1992.

ATTEST:

(CORPORATE SEAL)


P. C. Wolf, President
Cyprus Mines Corporation

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TALC DE LUZENAC S.A.

Officer's Certificate

I, Dr. Graham B. Lawson, Director of Talc Luzenac S.A., a company organized under the laws of France ("Luzenac"), pursuant to Section 11(c) of the European Stock Purchase Agreement dated as of June 5, 1992 (the "Purchase Agreement"), by and between Luzenac and Cyprus Mines Corporation, a Delaware corporation, hereby certify that (i) each of the representations and warranties of Luzenac contained in the Purchase Agreement are true in all material respects at and as of the date hereof with the same force and effect as though made at and as of the date hereof, except for changes permitted or contemplated by the Purchase Agreement and except to the extent that any representation or warranty is made as of a specified date, in which case such representation or warranty shall be true in all material respects as of such date, and (ii) Luzenac has performed and complied in all material respects with all its undertakings and agreements required by the Purchase Agreement to be performed or complied with by Luzenac prior to or on the date hereof.

IN WITNESS WHEREOF, I have hereunto signed my name as of June 30, 1992.

G. B. Lawson

Director

REDACTED DOCUMENT

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REDACTED DOCUMENT

CYPRUS MINES CORPORATION

SECRETARY'S CERTIFICATE



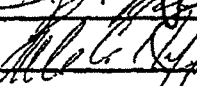
AND

INCUMBENCY CERTIFICATE

The undersigned hereby certifies that he is the Secretary of Cyprus Mines Corporation, a Delaware corporation ("Cyprus Mines"), and that, as such, he is authorized to execute this certificate on behalf of Cyprus Mines, and further certifies, as of immediately prior to the consummation of the transactions contemplated by the Stock Purchase Agreement dated as of June 5, 1992, as amended, (the "Purchase Agreement"), by and among Cyprus Mines Corporation, Cyprus Minerals Company, and RTZ America, Inc. as follows:

- (i) attached hereto as Exhibit A is a complete and correct copy of the resolutions of the Board of Directors of Cyprus Mines authorizing the execution and delivery of the Purchase Agreement and the consummation of the transactions contemplated thereunder;
- (ii) the following persons are duly elected, qualified and acting officers of Cyprus Mines and the signature appearing opposite the name of such officer is his true signature:

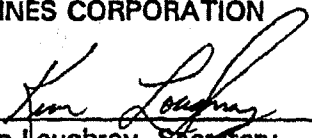
<u>NAME</u>	<u>OFFICE</u>
Philip C. Wolf	President
Gerald J. Malys	Senior Vice President
Dale E. Huffman	Assistant Secretary

<u>SIGNATURE</u>




IN WITNESS WHEREOF, I have hereunto signed my name and affixed the seal of Cyprus Mines Corporation this 30th day of June, 1992.

CYPRUS MINES CORPORATION

BY:


Kevin Loughrey, Secretary

REDACTED DOCUMENT

EXHIBIT A

RESOLVED, that the execution of that certain Stock Purchase Agreement dated June 5, 1992, as amended on June 24, 1992, among Cyprus Mines Corporation, Cyprus Minerals Company, and RTZ America Inc., a copy of which is attached hereto as Exhibit A, and the performance by this Corporation of its obligations thereunder hereby are authorized; and further

RESOLVED, that the President, any Senior Vice President, Vice President, the Controller, Treasurer, Secretary or Assistant Secretary of this Corporation, or any person designated by any of the foregoing hereby are authorized to take such action as is necessary or appropriate to give effect to the foregoing resolution, including but not limited to the authority to make amendments to the terms and conditions of the Agreement and to execute and deliver all such documents as may to such officer appear necessary or appropriate to carry out the intent of the resolutions.

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LONDON/2746.05

EXHIBIT A

STOCK PURCHASE AGREEMENT

AMONG

CYPRUS MINES CORPORATION

CYPRUS MINERALS COMPANY

and

RTZ AMERICA INC.

Dated as of June 5, 1992

REDACTED DOCUMENT

STOCK PURCHASE AGREEMENT dated as of June 5, 1992 (herein, together with the Schedules and Annexes attached hereto, referred to as the "Agreement") by and among Cyprus Mines Corporation, a Delaware Corporation ("Seller"), Cyprus Minerals Company, a Delaware corporation ("Cyprus") and RTZ America Inc., a Delaware corporation ("Buyer").

W I T N E S S E T H:

WHEREAS, Seller is the sole record and beneficial owner of all issued and outstanding shares of capital stock (the "Shares") of Cyprus Talc Corporation, a Delaware corporation ("Newco");

WHEREAS, Newco is the sole record and beneficial owner of all issued and outstanding shares of capital stock of Cyprus Industrial Minerals Corporation, a Nevada corporation; Cyprus Windsor Minerals Corporation, a Vermont corporation, and its subsidiary Cyprus Western Source Corporation, a California corporation; and Green Mountain Talc Corporation, a Delaware Corporation; and is the record and beneficial owner of [REDACTED] of the issued and outstanding shares of DIMITA S.A., a company organized under the laws of Spain and is the record and beneficial owner of [REDACTED] of the issued and outstanding shares of Nihon Mistrion Company, a Tokyo, Japan corporation (collectively the "Other Companies"); and

WHEREAS, upon the terms and conditions hereinafter set forth, Seller desires to sell or cause the sale of, and Buyer desires to purchase, the Shares;

NOW, THEREFORE, in reliance upon the representations and warranties made herein and in consideration of the mutual agreements herein contained, Buyer and Seller hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Accounting Principles" means the accounting principles, policies and procedures of the Companies set forth on Annex B hereto.

"Acquisition Proposal" shall have the meaning set forth in Section 7.10.

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"Active Employee" shall have the meaning set forth in Section 7.4(a).

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person.

"Assets of the Companies" means all assets, properties and rights of the Companies recorded on the Reference Balance Sheet.

"Breach" shall have the meaning set forth in Section 11.1(a).

"Business Liabilities" shall have the meaning set forth in Section 7.6.

"Buyer Indemnatee" shall have the meaning set forth in Section 11.1.

"Claims" shall have the meaning set forth in Section 7.6.

"Closing" shall have the meaning set forth in Section 3.1.

"Closing Date" shall have the meaning set forth in Section 3.1.

"Code" means the Internal Revenue Code of 1986, as amended.

"Companies" shall mean collectively Newco and the Other Companies and each and every one of them shall be a "Company".

"Confidentiality Agreement" shall have the meaning set forth in Section 7.1.

"Control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Current Assets" shall have the meaning set forth in Section 4.2.

"Current Liabilities" shall have the meaning set forth in Section 4.2.

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"Damages" shall have the meaning set forth in Section 11.1(a).

"Disputes Auditor" means Ernst & Young or any other independent accounting firm mutually agreed upon by Seller and Buyer.

"Encumbrances" shall have the meaning set forth in Section 5.3.

"Employee" shall have the meaning set forth in Section 5.14(i).

"Environmental Laws" mean any federal, state, foreign and local law, statute, ordinance, rule, regulation, code, license, permit, authorization, approval, consent, order, judgment, decree, injunction, requirement or agreement with any governmental entity and any judicial interpretation thereof, in effect on the Closing Date relating to (x) the protection, preservation or restoration of the environment, (including, without limitation, air, water vapor, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or (y) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, Release or disposal of Hazardous Substances. The term Environmental Law includes, without limitation, the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act (SARA), the Federal Water Pollution Control Act of 1972, the federal Clean Air Act, the federal Clean Water Act, the federal Resource Conservation and Recovery Act of 1976 (including the Hazardous and Solid Waste Amendments thereto), the federal Solid Waste Disposal and the federal Toxic Substances Control Act, the federal Insecticide, Fungicide and Rodenticide Act, each as in effect on the Closing Date. However, notwithstanding anything in this Agreement to the contrary, "Environmental Laws" shall not include (i) laws relating to product liability; and (ii) laws and regulations regarding human health or safety including without limitation, federal and state Occupational Safety and Health and Mine Safety and Health Acts (collectively, "Non-Environmental Laws").

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"European Companies" shall mean Cyprus Industrial Minerals de France SARL and Mistrion Mineralien GmbH.

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"Fee Property" shall have the meaning set forth in Section 5.8.

"Final Closing Statement" shall have the meaning set forth in Section 4.4.

"Financial Statements" shall have the meaning set forth in Section 5.5.

"Hamm Underground Mine Property" shall mean the property set forth on Annex C.

"Hazardous Substances" and "Hazardous Materials" mean any substance presently listed, defined, designated or classified as hazardous, toxic or radioactive under any Environmental Law, whether by type or by quantity, including any substance containing any such substance as a component. Hazardous Substance includes, without limitation, any toxic waste, pollutant, contaminant, hazardous substance, toxic substance, hazardous waste, special waste, industrial substance or petroleum or any derivative or by-product thereof, radon, radioactive material, asbestos containing material, urea formaldehyde foam insulation, lead and polychlorinated biphenyl.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indemnifying Party" shall mean any party indemnifying an Indemnatee pursuant to the terms of this Agreement.

"Indemnatee" means any party indemnified pursuant to the terms of this Agreement.

"Intellectual Property Rights" shall have the meaning set forth in Section 5.15.

"Knowledge of Seller" means the actual or "Other Knowledge" of R.D. Baker, F.F. Beyl, R.J. Buettner, D.E. Huffman, J.D. Lessner, M.J. Lorang, L.J. Verkest, P.C. Wolf or B.R. Wright.

"Leased Property" shall have the meaning set forth in Section 5.8.

"Leases" shall have the meaning set forth in Section 5.8.

"Liabilities of the Companies" means all liabilities and obligations of the Companies recorded on the Reference Balance Sheet.

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"Losses" shall have the meaning set forth in Section 11.3.

"Mineral Property" shall have the meaning set forth in Section 5.8.

"Non-Represented Employee" means any Employee who is not a Represented Employee.

"Other Companies" shall have the meaning set forth in the Preamble.

"Other Knowledge" means information which should have been acquired by a reasonable person in the position of R.D. Baker, F.F. Beyl, R.J. Buettner, D.E. Huffman, J.D. Lessner, M.J. Lorang, L.J. Verkest, P.C. Wolf or B.R. Wright and having his respective knowledge of facts (which shall be deemed to include the representations and warranties to be given by Seller to Buyer in this Agreement) which should have caused such reasonable person to make due enquiries, which enquiries would have provided such information.

"Permitted Exceptions" shall have the meaning set forth in Section 5.8.

"Person" means an individual, corporation, partnership, trust or unincorporated organization or a government or any agency or political subdivision thereof.

"Plan" shall have the meaning set forth in Section 5.14.

"Possessory Property" shall have the meaning set forth in Section 5.8.

"Pre-Closing Period" means any Tax period ending on or prior to the Closing Date; and a "Post-Closing Period" means any Tax period that is not a Pre-Closing Period.

"Preliminary Closing Statement" shall have the meaning set forth in Section 4.2.

"Purchase Price" shall have the meaning set forth in Section 2.2.

"Real Property" shall have the meaning set forth in Section 5.8.

"Reference Balance Sheet" means the combined balance sheet of the Companies and the European Companies as of March 31, 1992 included in the Financial Statements.

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"Release" has the same definition as in 42 U.S.C. § 9601(22).

"Represented Employee" means any Employee who is a member of a unit of Employees covered by a collective bargaining agreement.

"Returns" means all returns, reports, estimates, declarations, information returns and statements of any nature with respect to Taxes, including, without limitation, consolidated federal income tax returns of the Seller's Group, declarations of estimated tax and tax reports required to be filed with respect to the Companies or their respective income, properties or operations.

"Seller Indemnatee" shall have the meaning set forth in Section 11.2.

"Seller's Group" shall mean any "affiliated group" (as defined in Section 1504(a) of the Code without regard to the limitations contained in Section 1504(b) of the Code) that includes the Seller or any predecessor of or successor to Seller (or another such predecessor or successor).

"Seller's Insurance Policies" shall have the meaning set forth in Section 7.6.

"Shares" shall have the meaning set forth in the Preamble.

"Subsidiaries" shall mean any Person (other than an individual) in which another person owns, beneficially or of record, securities or any other interest representing fifty percent (50%) or more of the aggregate voting power or equity interest in such Person.

"Tax" or "Taxes" means any federal, state, local or foreign income, gross receipts, profits, severance, franchise, license, transfer, sales, use, payroll, employment, withholding, property (real or personal), excise and similar taxes (including interest, penalties or additions to such taxes and any interest in respect of such penalties or additions), but excluding all sales, use, value added, transfer and similar taxes imposed in connection with the consummation of the transactions contemplated by this Agreement.

"Working Capital of the Companies" shall have the meaning set forth in Section 4.2.

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ARTICLE 2

SALE AND PURCHASE OF SHARES

2.1. Sale and Purchase. Upon the terms and subject to the conditions contained herein, Seller will sell and transfer to Buyer, or cause the sale and transfer to Buyer of, and Buyer will purchase and accept, at the Closing, the Shares.

2.2. (a) Purchase Price and Payment. In consideration of the sale and transfer pursuant to Section 2.1, Buyer hereby agrees to pay to Seller a purchase price of (the "Purchase Price") [REDACTED], by wire transfer as provided in Section 3.2(b).

ARTICLE 3

CLOSING AND TERMINATION

3.1. Closing. The closing of the transactions provided for herein (the "Closing") will take place at the offices of Sullivan & Cromwell at 125 Broad Street, New York, New York at 10:00 a.m. (local time) on June 30, 1992 provided all conditions set forth in Articles 7 and 8 are satisfied or, if on such date such conditions are not satisfied, on the fifth business day following the satisfaction of all conditions set forth in Articles 7 and 8 (other than the conditions specified in Section 7.6 and 8.6, which shall be satisfied at the Closing), or at such other time and place as Buyer and Seller shall agree (the "Closing Date").

3.2. Transactions on the Closing Date. (a) At the Closing, Seller will deliver or cause to be delivered to Buyer the following:

(i) stock certificates evidencing the Shares, in each case endorsed in blank or with an executed blank stock power attached, and in form suitable for transfer of valid title thereto to Buyer or its assigns, free and clear of any Encumbrances.

(ii) resignations of each of the directors and officers of each Company (except as Buyer may specify to Seller prior to Closing);

(iii) resignations of such auditors for each Company as Buyer may specify to Seller prior to Closing; and

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(iv) each of the certificates and other documents required by Article 9 hereof.

(b) At the Closing, Buyer will deliver to Seller the following:

(i) the Purchase Price by wire transfer in immediately available funds in U.S. dollars to the following account:

Pittsburgh National Bank (PNB)
Pittsburgh, PA

Cyprus Minerals Company

Further Credit: Cyprus Mines Corporation

the Closing shall not be deemed consummated until Seller shall have received confirmation from PNB of its receipt of the Purchase Price and;

(ii) each of the certificates and other documents required by Article 8 hereof.

3.3. Termination. Anything contained in this Agreement other than in this Section 3.3 to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing:

(a) by mutual consent of Buyer and Seller;

(b) by either Buyer or Seller, if the transactions contemplated hereby are not consummated on or before August 31, 1992 (or such later date as may be agreed upon in writing by the parties hereto);

(c) by Buyer, if Seller shall breach in any material respect any of its representations, warranties or obligations hereunder and all breaches in the aggregate constitute a material adverse change, or unanticipated and undisclosed material liability previously unknown to Buyer which would have a material adverse effect, on the talc business taken as a whole and such breach shall not have been cured in all material respects or waived by Buyer and Seller shall not have provided reasonable assurance that such breach will be cured in all material respects on or before the Closing Date.

(d) by Seller, if Buyer shall breach in any material respect any of its representations, warranties or obligations hereunder and such breach shall not have been cured in all material respects or waived and Buyer shall not

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have provided reasonable assurance that such breach will be cured in all material respects on or before the Closing Date.

3.4 Effect of Termination. Termination of this Agreement pursuant to this Article 3 shall terminate all provisions of this Agreement, except that Section 3.4, the last sentence of Section 7.1(a) and Sections 12.2, 12.3 and 12.11 shall survive any such termination; provided, however, that termination pursuant to Sections 3.3(c) or (e) shall not relieve the defaulting or breaching party hereunder from any liability to the other party hereto resulting from the default or breach hereunder of such defaulting or breaching party occurring prior to the date of termination.

ARTICLE 4

PRELIMINARY AND FINAL CLOSING STATEMENTS; ADJUSTMENTS

4.1 Working Capital. The parties intend that "Working Capital of the Companies", as defined in Section 4.2 below, shall be [REDACTED] as of the Closing. Using the procedure set forth below, the parties shall determine the amount and manner by which Seller shall pay Buyer for any deficiency in Working Capital of the Companies below [REDACTED] or by which Buyer shall pay Seller for any excess in Working Capital of the Companies over [REDACTED] as of the Closing.

4.2 Preliminary Closing Statement. (a) As soon as reasonably possible after the Closing Date but in any event within sixty (60) days thereafter, Buyer shall prepare and deliver to Seller a statement of combined Working Capital of the Companies derived from a combined balance sheet for the Companies and the European Companies as of the Closing (the "Preliminary Closing Statement"). "Working Capital of the Companies" shall for all purposes of this Agreement mean, as the context requires, the difference between total Current Assets and total Current Liabilities of the Companies and the European Companies reflected on the Reference Balance Sheet, the Preliminary Closing Statement or the Final Closing Statement. "Current Assets" shall for all purposes of this Agreement mean, as the context requires, cash, money on deposit with banks and other financial institutions, securities (excluding the stock of its subsidiaries), accounts receivable from customers or employees of the Companies, other receivables, all crude, work-in-process, finished goods and other product inventories, materials and supplies, and prepaid expenses. "Current Liabilities" shall

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for all purposes of this Agreement mean, as the context requires, the amount of accounts payable, short-term debt, the current portion of long-term debt, and accrued liabilities due within one year other than liability for federal income taxes. Any current assets retained by Seller at Closing shall be excluded from Working Capital of the Companies. Any current liabilities assumed or retained by Seller at Closing shall be excluded from Working Capital of the Companies. Current Assets and Current Liabilities shall be recorded consistent with the Accounting Principles. Seller shall assist Buyer, as reasonably requested by Buyer, in the preparation of such statement.

(b) The Preliminary Closing Statement and the Final Closing Statement shall be prepared in accordance with the Accounting Principles applied on a basis consistent with that applied in preparing the Reference Balance Sheet. In the determination of Working Capital of the Companies, finished product and crude talc inventories shall be valued in accordance with Seller's normal inventory valuation procedures and such valuation shall not be subject to adjustment.

(c) Seller will make available to Buyer and its representatives, as reasonably requested by Buyer, all books, records and other documents pertaining to the businesses of the Companies deemed necessary or desirable by Buyer in preparing the Preliminary Closing Statement.

4.3. Review of Statements. Seller and its independent certified public accountants may review the Preliminary Closing Statement and the books of account of Buyer relating to the Companies and the European Companies and may make inquiry of the representatives of Buyer's accountants and Buyer. The Preliminary Closing Statement shall be binding and conclusive upon, and deemed accepted by, Seller unless Seller shall have notified Buyer in writing within thirty (30) days after receipt of the Preliminary Closing Statement of any objections thereto. A notice under this Section 4.3 shall specify in reasonable detail the items in the Preliminary Closing Statement which are being disputed, and a summary of the reasons for such dispute.

4.4. Disputes; Final Closing Statement. (a) At the request of either party, any dispute between the parties relating to the Preliminary Closing Statement which cannot be resolved by them within thirty (30) days after receipt of notice of any objections to such Preliminary Closing Statement pursuant to Section 4.3 shall be referred to the Disputes Auditor for decision, which decision shall be final and binding on both parties. The parties agree that they

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will require the Disputes Auditor to render its decision within thirty (30) days after referral of the dispute to the Disputes Auditor for decision pursuant hereto.

(b) Before referring a matter to the Disputes Auditor, the parties shall agree on procedures to be followed by the Disputes Auditor (including procedures for presentation of evidence). If the parties are unable to agree upon procedures before the end of thirty (30) days after receipt of notice of any objections pursuant to Section 4.3, the Disputes Auditor shall establish procedures giving due regard to the intention of the parties to resolve disputes as quickly, efficiently and inexpensively as possible; the Disputes Auditor's procedures may be, but need not be, those proposed by either party, provided, that such procedure shall require the Disputes Auditor to render its decision within thirty (30) days after referral of the dispute to the Disputes Auditor for decision pursuant hereto. The parties shall, as promptly as practicable, submit evidence in accordance with the procedures agreed upon or established by the Disputes Auditor, and the Disputes Auditor shall decide the dispute in accordance therewith as promptly as practicable. The fee of the Disputes Auditor for, and relating to, the making of any such decision shall be borne by the parties equally.

(c) The Preliminary Closing Statement shall become final and binding on both parties upon the earliest of (i) if no such notice has been given, the expiration of the period within which Seller may notify Buyer of any objections thereto pursuant to Section 4.3, (ii) agreement in writing by Seller and Buyer that such Preliminary Closing Statement, together with any modifications thereto agreed by Seller and Buyer, shall be final and binding and (iii) the date on which the Disputes Auditor shall issue its decision with respect to any dispute relating to such Preliminary Closing Statement. The Preliminary Closing Statement, as adjusted pursuant to any agreement between the parties or pursuant to the decision of the Disputes Auditor, when final and binding on both parties, is herein referred to as the "Final Closing Statement".

4.5 Adjustment. Promptly after the Preliminary Closing Statement having become final and binding on Seller and Buyer pursuant to Section 4.4, but in no event later than the fifth business day thereafter, the following shall occur:

(a) If the Working Capital of the Companies as reflected on the Final Closing Statement exceeds [REDACTED], Buyer shall pay to Seller, by wire transfer in immediately available funds to the account designated by

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Seller not less than three business days prior to the date of such payment, an amount equal to such excess.

(b) If the Working Capital of the Companies as reflected on the Final Closing Statement is less than [REDACTED], Seller shall pay to Buyer, by wire transfer in immediately available funds to the account designated by Buyer not less than three business days prior to the date of such payment, an amount equal to such deficit.

4.6 Effect of Payment. Notwithstanding any other provision of this Agreement to the contrary, any payment made by Seller to Buyer or Buyer to Seller under this Article 4 shall have no effect upon either party's obligations to the other party under any other provision of this Agreement, including without limitation, Article 11.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF SELLER AND CYPRUS

Seller and Cyprus represent and warrant, jointly and severally, to Buyer that:

5.1 Organization of Seller, Cyprus and the Companies; Authority. Seller, Cyprus and each of the Companies is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with, in the case of Seller and Cyprus, the corporate power and authority to enter into this Agreement and to perform their respective obligations hereunder. Each of the Companies is qualified to do business in each jurisdiction in which the nature of its business requires it to be so qualified except where failure to be so qualified would not have a material adverse effect on the assets, businesses, financial condition, results of operations or prospects of such Company. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Seller and of Cyprus. This Agreement has been duly executed and delivered by Seller and Cyprus and constitutes the valid, binding and enforceable obligation of Seller and Cyprus.

5.2. Ability to Carry Out the Agreement. Except as provided in Schedule 5.2, none of Seller, Cyprus or any of the Companies is subject to or bound by any provision of

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(i) any law, statute, rule, regulation or judicial or administrative decision,

(ii) any articles or certificates of incorporation or by-laws,

(iii) any mortgage, deed to secure debt, deed of trust, lease, note, shareholders' agreement, bond, indenture, other instrument or agreement, license, permit, trust, custodianship or other restriction, or

(iv) any judgment, order, writ, injunction or decree of any court, governmental body, administrative agency or arbitrator,

that would prevent or be violated by or under which there would be a default as a result of, nor is the consent of any Person under any material contract or agreement to which any of the Companies or any of its predecessors is a party, which consent has not been obtained, required for the execution, delivery and performance by Seller of this Agreement and the transactions contemplated hereby.

5.3. Capitalization of the Companies; Ownership.

(a) The authorized, issued and outstanding capital stock of each of the Companies are set forth in Schedule 5.3. All of the issued and outstanding shares of capital stock of each of the Companies are duly authorized, validly issued, fully paid and nonassessable. Except as set forth in Schedule 5.3, there are no outstanding options, warrants or other rights of any kind to acquire any additional shares of capital stock of any of the Companies or securities convertible into or exchangeable for, or which otherwise confer on the holder thereof any right to acquire, any such additional shares, nor is any of the Companies committed to issue any such option, warrant, right or security.

(b) The Shares are owned of record and beneficially by Seller. Seller has good and valid title to the Shares, free and clear of any and all liens, claims, restrictions, encumbrances, security interests or options ("Encumbrances") and good and valid title to the Shares, free and clear of any and all Encumbrances will pass to Buyer on the Closing Date. Except as set forth on Schedule 5.3, Newco owns all shares of capital stock of the Other Companies, free and clear of any Encumbrances.

5.4. Equity Interests. Except as set forth in Schedule 5.3, none of the Companies or the European Companies has, directly or indirectly, any equity interest

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in any other corporation, joint venture, partnership or other entity.

5.5. Financial Statements. Seller has heretofore furnished Buyer with copies of the following financial statements: (i) combined balance sheets for the Companies and the European Companies as of December 31, 1991 and as of March 31, 1992, and (ii) combined income statements and statements of cash flow (or, if applicable, changes in financial position) for the year ended December 31, 1991, and the period ended March 31, 1992 (such balance sheets and income statements and statements of cash flow (or, if applicable, changes in financial position), together with the comments thereto, being collectively referred to as the "Financial Statements"). The Financial Statements are attached hereto as Annex A. To the Knowledge of Seller, the Financial Statements have been prepared in conformity with the Accounting Principles as applied by the Companies on a consistent basis throughout the period covered by such statements and the accounting principles used in the preparation of the Financial Statements are consistent with the accounting principles used by Seller and amended from time to time in the preparation of its financial statements for the years 1989, 1990 and 1991. To the Knowledge of Seller, except as disclosed in the Reference Balance Sheet or in Schedule 5.5, as of March 31, 1992 there were no actual or contingent debts, liabilities or obligations of any of the Companies which were required to be disclosed on the Reference Balance Sheet or any note thereto by the Accounting Principles as applied by the Companies nor as of the Closing, any contingent debts, liabilities or obligations of any of the Companies which were required to be disclosed on the Final Closing Balance Sheet or any note thereto by the Accounting Principles as applied by the Companies.

5.6. Absence of Certain Changes or Events. To the Knowledge of Seller, except as set forth on Schedule 5.6, or specifically required by the Agreement to consummate the transactions contemplated by the Agreement, since December 31, 1991, the Companies have conducted their businesses in the ordinary and usual course, and there has not been (i) any change or amendment to the charter, by-laws or other organizational agreements of any of the Companies, (ii) any issuance or sale of any shares of capital stock of any of the Companies, or options, warrants or other rights of any kind to acquire any such shares or securities convertible into or securities exchangeable for, or which otherwise confer on the holder thereof any rights to acquire, any such shares, or enter into any agreement obligating it to do any of the foregoing, (iii) any non-cash dividends declared, set aside, paid or made with respect to the capital stock of any

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of the Companies, except as provided in Section 7.3(b), (iv) any damage, destruction or other casualty loss of any asset or assets of the Companies (whether or not covered by insurance) which, singly or in the aggregate, has a Material Adverse Effect, (v) any increase in the compensation payable or to become payable by any of the Companies to any of its officers, directors or employees, or any increase in any bonus, insurance, pension or other employee benefit plan, payment or arrangement made by any of the Companies for or with any such officers, directors or employees, except in the ordinary course of business consistent with past practice (vi) any labor dispute, other than routine labor matters, (vii) any transaction between any of the Companies on the one hand and any of Seller, Cyprus or any of their Affiliates (other than the Companies) on the other hand, other than transactions in the ordinary and usual course of business, (viii) any acquisition or disposition of businesses or assets, other than in the ordinary course of business, (ix) any increased production or purchase of inventory in anticipation of the transactions contemplated by this Agreement, (x) any increase or decrease in the accounts receivable or accounts payable of the Companies in anticipation of the transactions contemplated by this Agreement or (xi) any other event or change of condition of any character which, singly or in the aggregate, has had or is reasonably likely to have a material adverse effect on the assets, businesses, financial condition, results of operations or, to the extent the event or change is caused by Seller, prospects, of the Companies taken as a whole.

5.7. Title to Personal Properties: Absence of Liens. To the Knowledge of Seller, except as set forth on Schedule 5.7, each of the Companies has good and valid title to, or valid and subsisting leasehold or other possessory interests in, all of its personal properties and assets reflected on the Reference Balance Sheet (except for property and assets disposed of since the date of the Reference Balance Sheet) or acquired since the date of the Reference Balance Sheet and required by the Accounting Principles to be recorded on the balance sheets of such Company, free and clear of any Encumbrances, except for Encumbrances which, individually or in the aggregate, do not exceed [REDACTED].

5.8 Real Property Matters:

(a) Title to Real Properties: Absence of Liens. To the Knowledge of Seller, the Companies (i) own good and valid fee simple title in and to those certain real properties more particularly identified by parcel on Schedule 5.8 (the "Fee Property"), free and clear from any and all Encumbrances other than those identified as

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Permitted Exceptions on Schedule 5.8 (the "Permitted Exceptions"), (ii) own good and valid fee simple title to certain mineral rights pursuant to certain Deeds more particularly identified by parcel on Schedule 5.8 (the "Mineral Property") (iii) hold valid and subsisting leasehold estates in and to those certain real properties more particularly identified by parcel on Schedule 5.8 (the "Leased Property"), pursuant, in each case, to a valid and subsisting lease (individually, "Lease" and collectively, the "Leases") identified, as to each Leased Property, on Schedule 5.8. and (iv) hold a possessory interest in certain unpatented mining claims subject to the paramount title of the United States Government as set forth on Schedule 5.8 (the "Possessory Property"). The Fee Property, the Mineral Property, the Leased Property and the Possessory Property are hereinafter referred to as the "Real Property". To the Knowledge of Seller, Schedule 5.8 also includes a complete and accurate list of all patented and unpatented mining claims of the Companies.

(b) Wetlands. To the Knowledge of Seller, except as set forth on Schedule 5.8, there does not exist any written survey, study or report which claims specifically that any portion of the Real Property is a wetland as that term is used and defined in The Clean Water Act, 33 U.S.C. §§ 1251 et seq., as amended, which would render previously disclosed talc reserves unrecoverable.

(c) Real Property Records. Seller has made available to Buyer, to the extent in Seller's possession or control, or in the possession or control of one of the Companies, copies of any documents directly relating to the Real Property, including, without limitation, copies of any and all title insurance policies, title commitments, title abstracts; deeds and options; leases and pipeline documents; plans and surveys; and environmental studies, surveys and reports. In addition, in the event any additional items become available to Seller during the term of this Agreement, Seller shall promptly make such items or copies of such items available to Buyer.

(d) Preservation of Mineral Rights. To the Knowledge of Seller, except as set forth in Schedule 5.8, the Companies have good and valid title or possessory interest (where indicated) to the mineral rights located on the Real Property and each of them and its respective immediate predecessors have complied in all material respects with the requirements of any

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and all federal, state or local laws or ordinances related to the preservation of such mineral rights.

(e) Operations Within Boundary Lines. To the Knowledge of Seller, except as set forth in Schedule 5.8, the activities conducted by any of the Companies and the improvements located on the Real Property are in all material respects within the boundary lines of the Real Property as described in Schedule 5.8 and there are no material encroachments by others onto the Real Property.

(f) Condemnation. To the Knowledge of Seller, there is not now pending any condemnation or similar proceeding which affects the Real Property or any portion thereof. Seller has received no notice that any such proceeding or taking by condemnation is contemplated.

5.9 Litigation. To the Knowledge of Seller, except as set forth on Schedule 5.9, there is no action, suit, proceeding or investigation pending or threatened against any Company or relating to any Company's properties, at law, in equity or otherwise, in, before, or by any court or governmental agency or authority. To the Knowledge of Seller, there are no unsatisfied judgments or outstanding orders, injunctions, decrees, stipulations or awards (whether rendered by a court, an administrative agency or by an arbitrator) against any of the Companies or against any Real Property or any other of their properties, assets or businesses.

5.10 Compliance with Law. To the Knowledge of Seller, except as with respect to matters set forth in Section 5.16 which are covered therein, and except as set forth on Schedule 5.10, the business of each Company is being conducted, and has at all times during the last three years been conducted by a Company or its predecessor, in material compliance with all laws, ordinances and regulations of any governmental entity, common law and equitable doctrines applicable to such Company (including, without limitation, Non-Environmental Laws). To the Knowledge of Seller, all material governmental approvals, permits and licenses required by any Company in connection with the conduct of its business have been obtained and are in full force and effect and are being complied with in all material respects.

5.11 Contracts. (a) To the Knowledge of Seller, Schedule 5.11 sets forth each written contract or agreement outstanding as of the date hereof to which any Company is a party or to which any of its properties are bound and which,

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(i) involves future payment or receipt of in excess of [REDACTED] or future performance or receipt of services or delivery or receipt of goods and materials, in each case with an aggregate value in excess of [REDACTED], including, but not limited to, sale and purchase agreements, distributorship agreements and loan agreements, notes and other financing documents;

(ii) is a guarantee in respect of indebtedness of any Person (other than a Company) which may involve future payment by a Company in excess of [REDACTED], or is a mortgage, security agreement or other collateral arrangement securing indebtedness of any Person (other than a Company) and creating Encumbrances on properties and assets of a Company;

(iii) is a lease providing for monthly rental payments by a Company in excess of [REDACTED] (exclusive of charges for taxes, insurance, utilities, maintenance and repair);

(iv) is an employment or consulting contract or is a collective bargaining agreement;

(v) is a technology license agreement;

(vi) contains a change of control provision or provisions of similar effect;

(vii) is between any Company and Seller or any of Seller's Affiliates (other than any Company);

(viii) is not an arm's-length agreement; or

(ix) contains any restriction on the Companies ability to compete with any other business.

(b) To the Knowledge of Seller, there is no material default by any Company or any other party, under any contract or agreement set forth or described in Schedule 5.11.

5.12. Brokers and Intermediaries. Except for Dillon Read & Co., neither Seller nor any Company has employed any broker, finder, advisor or intermediary in connection with the transactions contemplated by this Agreement which would be entitled to a broker's, finder's or similar fee or commission in connection therewith or upon the consummation thereof. Seller shall be responsible for making any payments to which Dillon Read & Co. shall be entitled.

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5.13. Tax Matters. (a) Except as set forth in Schedule 5.13, (i) all Returns with respect to Taxes that are required to have been filed by or with respect to the Seller's Group prior to the date of this Agreement, including any of the Companies, have been duly filed, (ii) all Taxes shown to be due on the Returns referred to in clause (i) or in assessments received have in either case been paid in full, (iii) the Returns referred to in clause (i) have been examined by the Internal Revenue Service or the appropriate state, local or foreign taxing authority or the period for assessment of the Taxes in respect of which such Returns were required to be filed has expired, (iv) all deficiencies asserted or assessments made as a result of such examinations have been paid in full, (v) no issues that have been raised by the relevant taxing authority in connection with the examination of any of the Returns referred to in clause (i) are currently pending, (vi) no waivers of statutes of limitation have been given or requested by or with respect to any Taxes of the Seller's Group or any of the Companies, (vii) there are no adjustments required by Section 481 of the Code or similar carryover items that would affect the income tax liability of any of the Companies for a tax year that ends after the Closing Date, and (viii) no adjustments have been made or proposed by the Internal Revenue Service or the appropriate state, local or foreign taxing authority with respect to any of the Returns referred to in clause (i) which would in any way affect the liability for Taxes of any of the Companies for any taxable year or periods ending after the Closing Date.

(b) No tax is required to be withheld pursuant to Section 1445 of the Code as a result of the transfer contemplated by this Agreement.

(c) As a result of Buyer's purchase of the Shares, neither Buyer nor any Company will be obligated to make a payment to an individual that would be a "parachute payment" to a "disqualified individual" as those terms are defined in Section 280G of the Code, without regard to whether such payment is reasonable compensation for personal services performed or to be performed in the future.

5.14. Employee Benefits.

(i) All benefit plans, contracts or arrangements having a benefit value exceeding, in present value terms (determined using a discount rate of 8-1/2% per annum), [REDACTED] (regardless of whether they are funded or unfunded, foreign or domestic, contractual or not) covering current employees or former employees of the Companies (the "Employees"), including, but not limited to, "employee

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benefit plans" within the meaning of Section 3(3) of ERISA, and plans of deferred compensation (the "Benefit Plans"), are listed in Schedule 5.14. True and complete copies of all Benefit Plans including, but not limited to, any trust instruments and insurance contracts forming a part of any Benefit Plans, summary plan descriptions and all amendments thereto have been made available to Buyer.

(ii) To the Knowledge of Seller, all employee benefit plans, other than "multiemployer plans" within the meaning of Section 3(37) or 4001(a)(3) of ERISA, covering Employees (the "Plans"), to the extent subject to ERISA, are in substantial compliance with ERISA. To the Knowledge of Seller, except as set forth on Schedule 5.14, each Plan which is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA ("Pension Plan") and which is intended to be qualified under Section 401(a) of the Code, has received a favorable determination letter, or is currently the subject of a request for a determination letter, from the Internal Revenue Service, and Seller is not aware of any circumstances likely to result in refusal or revocation of any such favorable determination letter. To the Knowledge of Seller, there is no material pending or threatened litigation relating to the Plans. To the Knowledge of Seller, the Companies have not engaged in a transaction with respect to any Plan that, assuming the taxable period of such transaction expired as of the date hereof, could subject the Companies to a tax or penalty imposed by either Section 4975 of the Code or Section 502(i) of ERISA in an amount which, individually or in the aggregate, would be material.

(iii) To the Knowledge of Seller, no liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by the Companies with respect to any ongoing, frozen or terminated "single-employer plan", within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or the single-employer plan of any entity which is considered one employer with any Company under Section 4001 of ERISA or Section 414 of the Code (an "ERISA Affiliate"). To the Knowledge of Seller, the Companies have not incurred and do not expect to incur any withdrawal liability with respect to a multiemployer plan under Subtitle E of Title IV of ERISA (regardless of whether based on contributions of an ERISA Affiliate). To the Knowledge of Seller, no notice of a "reportable event", within the meaning of Section 4043 of ERISA for which the 30-day reporting requirement has not been waived, has been required to be filed for any Pension Plan or by any ERISA Affiliate within the 12-month period ending on the date hereof.

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(iv) To the Knowledge of Seller, all contributions required to be made under the terms of any Benefit Plan have been timely made. Neither any Pension Plan nor any single-employer-plan of an ERISA Affiliate has an "accumulated funding deficiency" (whether or not waived) within the meaning of Section 412 of the Code or Section 302 of ERISA and no ERISA Affiliate has an outstanding funding waiver. To the Knowledge of Seller, the Companies have not provided, or are required to provide, security to any Pension Plan or to any single-employer plan of an ERISA Affiliate pursuant to Section 401(a)(29) of the Code.

(v) To the Knowledge of Seller, except as previously disclosed in writing to the Buyer, under each Pension Plan which is a single-employer plan, as of the last day of the most recent plan year ended prior to the date hereof, the actuarially determined present value of all "benefit liabilities", within the meaning of Section 4001(a)(16) of ERISA (as determined on the basis of the actuarial assumptions contained in the Plan's most recent actuarial valuation), did not exceed the then current value of the assets of such Plan, and there has been no material change in the financial condition of such Plan since the last day of the most recent plan year. To the Knowledge of Seller, the withdrawal liability of the Companies under each Benefit Plan which is a multiemployer plan to which the Companies or an ERISA Affiliate has contributed during the preceding 12 months, determined as if a "complete withdrawal", within the meaning of Section 4203 of ERISA, had occurred as of the date hereof, does not exceed [REDACTED].

(vi) To the Knowledge of Seller, the Companies have no obligations for post retiree health and life benefits under any Benefit Plan, except as set forth on Schedule 5.14. To the Knowledge of Seller, there are no restrictions on the rights of the Companies to amend or terminate any such Benefit Plan or any post retirement medical plan covering Active Employees without incurring any liability thereunder, except for any restrictions set forth in the Plan or arising under a collective bargaining agreement.

5.15. Patents and Trademarks. To the Knowledge of Seller, the Companies own or have the rights to use, without payment of any consideration, all patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, licenses and rights which are necessary for use in connection with the businesses of the Companies (collectively, the "Intellectual Property Rights"). The Intellectual Property Rights owned by the Companies are described on Schedule 5.15 hereto. To the Knowledge of Seller, the use and registration of the

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Intellectual Property Rights do not conflict with the intellectual property rights of any other person, firm or corporation and no other person's, firm's or corporation's operations conflict with the use and registration of the Intellectual Property Rights. To the Knowledge of Seller, there are no suits pending or threatened by any of the Companies claiming a conflict by such Company with any intellectual property rights of third parties or a conflict by any third party claiming a conflict by such third party with any of the Intellectual Property Rights.

5.16. Environmental Matters. For the purpose of this Section 5.16 only, and expressly not for the purpose of Section 11.3 hereof, "Predecessors" shall mean the companies that operated Seller's talc business immediately prior to the creation of Newco. Except as set forth on Schedule 5.16:

(a) Each of the Companies has obtained all material permits, licenses and other such authorizations required to be obtained by it for the operation of its business under all applicable Environmental Laws.

(b) Each of the Companies is, and each of the Companies and its Predecessors has been, in material compliance with all applicable Environmental Laws.

(c) None of Seller, any Company or any of their respective Predecessors have received any written notice during the last six years of any material violation of any Environmental Law by the Companies or their respective Predecessors, and there are no civil, criminal or administrative actions, suits, hearings, proceedings, written notices of violations, claims or demands pending or, to the Knowledge of Seller, threatened against any Company or with respect to any property owned or previously owned by any Company or its Predecessor under any Environmental Law. None of the Companies has received any written notice of any actual or threatened Release of any Hazardous Substance in violation of any Environmental Law.

(d) None of the Companies or any of its Predecessors have generated, transported, or disposed, and none of the Companies is generating, transporting or disposing, of any Hazardous Substances to, in, upon, about, or under any property wherever situated, which have resulted in a Release giving rise to any material claims, losses, damages (including consequential and other damages), liabilities, penalties, expenses, demands, fines, or cleanup or monitoring costs; under and as a result of a violation of any Environmental Law.

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(e) None of the Companies and no other party has been involved in any activity in, upon, about, or under the Real Property or any parcel or portion thereof, and none of the Companies or any of its Predecessors have been involved in any activity in, upon, about, or under any property previously owned by any Company or its Predecessors, in connection with the generation, use, handling, treatment, removal, storage, clean up, transport, or disposal of any Hazardous Substances which have resulted in a Release giving rise to any claims, losses, damages (including consequential and other damages), liabilities, penalties, expenses, demands, fines or cleanup or monitoring costs; under and as a result of a violation of any Environmental Law.

(f) To the Knowledge of Seller, there are not now any underground storage tanks (as such term is defined in 40 CFR § 280.12) in, upon, about or under any of the Real Property or any parcel or portion thereof.

(g) Seller has made available in writing to Buyer which equipment of the Companies contain PCB and Seller has made available to Buyer all reports relating thereto.

(h) There are not now, nor has there ever to the Knowledge of Seller been, any areas in, upon, about, or under the Real Property or any parcel or portion thereof which should have been permitted as treatment, storage, or disposal facilities under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.

5.17 Improper Payments. To the Knowledge of Seller, no improper payment has been made by or on behalf of any of the Companies which is in violation of any applicable federal, state, local or foreign law.

5.18 Insurance. Full and complete copies of all property and casualty insurance policies which currently insure each of the Companies have been made available to Buyer.

5.19 Talc Reserves. Seller has made available its talc reserve written data to Buyer. To the Knowledge of Seller, Seller's reporting of talc reserves is consistent with the reserve reporting requirements of the U.S. Securities and Exchange Commission.

5.20 Entire Business. The Companies and the European Companies conduct all of the talc business of Seller and its Affiliates and own (without any right, title or encumbrance in favor of Seller or any of its Affiliates other than the Companies) all of the assets, rights or interests relating to such business, other than Cyprus logos

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and the Hamm Underground Mine Property, that are owned by Seller or any of its Affiliates. The assets of the Companies as of the Closing Date will be sufficient to enable the Companies to carry out the talc business of Seller and its Affiliates as presently conducted by Seller and its Affiliates.

5.21 Mining and Technical Matters. (a) For the purposes of this representation and warranty, "Mineral Rights" means all rights, leases, concessions, licenses and other entitlements to explore for, mine and extract all and any minerals.

(b) To the Knowledge of Seller, except as set forth on Schedule 5.8, each Company is duly authorized to carry on production of minerals in each jurisdiction where it presently carries on such activities, has good and valid title to all Mineral Rights required in connection with its current operations and possesses all rights of access, easements, rights to water, power and other services necessary for the said operations.

(c) To the Knowledge of Seller, each Company is duly authorized to carry on exploration for minerals (where such exploration is currently in progress) in each jurisdiction where it carries on such activities.

(d) To the Knowledge of Seller, all Mineral Rights held by a Company are in full force and effect and, free from cancellation, forfeiture or any accrued right of termination and there has been no material adverse change in the condition of or rights under the same except depletion of ore reserves due to operations in the ordinary course of business; provided, however, that with respect to cancellation of possessory interests, Seller only represents and warrants that it has not received any written notice of cancellation.

(e) To the Knowledge of Seller, no Company has received any notice of default or claim of default or of any current or threatened expropriation, withdrawal or cancellation of any Mineral Rights nor are there any suits or proceedings in progress or pending or threatened against or affecting any Mineral Rights or the minerals produced therefrom which, if decided adversely, would materially prejudice the Mineral Rights or the rights enjoyed thereunder.

(f) To the Knowledge of Seller, except as set forth on Schedule 5.8, none of the Mineral Rights nor the production of minerals thereunder is subject to any royalty, production payment, lien, charge, security interest or other

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encumbrance, and no Company is obliged by virtue of any prepayment under any contract providing for the sale of any such minerals or under any similar arrangement to deliver any of such minerals at any future date without then or in due course thereafter receiving full payment therefor.

(g) To the Knowledge of Seller, the records supplied to Buyer relating to:

(i) geological, geophysical, geochemical, drilling and other engineering data;

(ii) maps and drawings showing mining operations carried out;

(iii) ore reserve estimates and production data; and

(iv) metallurgical test work,

are true and accurate, within the standards of the industry, in all material respects.

5.22 Disclosure. To the Knowledge of Seller, all written information which has been given by Seller or any representative of Seller to Buyer or any representative of Buyer, is true, complete and accurate in all material respects and there are no facts, matters or circumstances which render any such information inaccurate or misleading in any material respect.

5.23 Inventory. All inventories of the Companies are of a quality and specification conforming to the usual standards used by the Companies, and except as set forth on Schedule 5.23, all inventories are reflected on the Reference Balance Sheet in accordance with the Accounting Principles to realizable value on a going-concern basis. There are no talc ores included in the inventories of the Companies that can not produce products in conformity with the Companies existing product specifications and existing production methods.

5.24 Condition of the Assets of the Companies. To the Knowledge of Seller, all of the physical assets of the Companies, including machinery and equipment, are in reasonable operating condition required for the current conduct of the business of the Companies, normal wear and tear excepted.

5.25 Accounts Receivable. To the Knowledge of Seller, all accounts receivable of the Companies and the European Companies shown on the Reference Balance Sheet, and

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all accounts receivable arising thereafter and prior to the Closing shown in the books of the Companies, arose and will arise in the ordinary course of business and are fully collectible, except to the extent a bad debt reserve has been established for such accounts receivable in accordance with the Accounting Principles.

5.26 Formation of Newco. Newco was incorporated on April 1, 1992 in the State of Delaware. Since its date of incorporation, Newco has not engaged in any activity other than activities contemplated and disclosed to Buyer in connection with the restructuring of the talc business of Seller and its Affiliates.

5.27 Working Capital of the Companies. To the Knowledge of Seller, no individual working capital item set forth on the Reference Balance Sheet has changed by more than [REDACTED] since the date of the Reference Balance Sheet, except for changes in the ordinary course of business of the Companies.

5.28 Disclaimer. No representations or warranties have been made to Buyer by Seller other than those expressly set forth in this Agreement.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that:

6.1 Organization and Authority of Buyer. Buyer is a Delaware corporation, with the corporate power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and, constitutes the valid, binding and enforceable obligation of Buyer.

6.2 Ability to Carry Out the Agreement. Buyer is not subject to or bound by any provision of

(i) any law, statute, rule, regulation or judicial or administrative decision,

(ii) any articles or certificates of incorporation or by-laws,

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(iii) any mortgage, deed to secure debt, deed of trust, lease, note, shareholders' agreement, bond, indenture, other instrument or agreement, license, permit, trust, custodianship, other restriction, or

(iv) any judgment, order, writ injunction or decree of any court, governmental body, administrative agency or arbitrator,

that would prevent or be violated by or under which there would be a default as a result of, nor is the consent of any Person under any material contract or agreement which has not been obtained required for, the execution, delivery and performance by Buyer of this Agreement and the transactions contemplated hereby.

6.3. Brokers and Intermediaries. Buyer has not employed any broker, finder, advisor or intermediary in connection with the transactions contemplated by this Agreement which would be entitled to a broker's, finder's, or similar fee or commission in connection therewith or upon the consummation thereof.

6.4. Investment. Buyer is acquiring the Shares for its own account for investment, without a view to, or for resale in connection with, the distribution thereof in violation of federal or state securities laws and with no present intention of distributing or reselling any part thereof. Buyer will not so distribute or resell any Shares in violation of any such law.

ARTICLE 7

CERTAIN COVENANTS AND AGREEMENTS
OF SELLER, CYPRUS AND BUYER

7.1. Access and Information; Testing of Reserves; Notice of Breaches. (a) Seller shall permit Buyer and its representatives (including, without limitation, its public accountants, counsel and other advisors) after the date of this Agreement to have access during normal business hours, upon reasonable advance notice to Seller to the officers and directors of the Companies and/or the Seller (as appropriate), the auditors of the Companies and any and all of the premises, properties, contracts, books, records and data of or relating to each of the Companies. Without limiting the foregoing, Buyer, its public accountants, counsel and other advisors shall have the right at any time and from time to time prior to Closing to enter the Real

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Property, or any portion or parcel thereof, for the purpose of obtaining a survey, either boundary or as-built, of such Real Property, conducting Phase I environmental audits and property audits of Real Property, surveying and otherwise examining the physical, hydrological and topographical nature of the Real Property. "Phase I environmental audits" shall be understood to consist of walk-throughs of any of the Real Property or facilities thereon, review of documents relating to environmental issues, interviews of personnel with knowledge relating to environmental issues, and review of public records. Such access shall be conducted by Buyer and its representatives in such a manner as not to interfere unreasonably with the business or operations of Seller or any Company. All information provided to Buyer pursuant hereto shall be subject to that certain confidentiality agreement executed by an affiliate of Buyer and dated April 24, 1991 (the "Confidentiality Agreement").

(b) From the date hereof through and including the Closing Date, Seller shall cause the Companies to give full access to Buyer and its representatives for the purpose of testing Seller's talc reserves, using standard industry testing techniques. Such access shall be conducted by Buyer and its representatives in such a manner as not to interfere unreasonably with the business or operations of Seller or any Company.

7.2 Regulatory Filings. Each party hereto will furnish to the other party hereto such necessary information and reasonable assistance as such other party may reasonably request in connection with its preparation of necessary filings or submissions to any government agency related to this transaction.

7.3 Conduct of Business; Intercompany Accounts.

(a) Prior to the Closing, and except as set forth in Schedule 7.3 or otherwise contemplated by this Agreement or consented to or approved by Buyer in writing, Seller covenants and agrees that:

(i) it will cause the businesses conducted by the Companies to be operated only in the ordinary and usual course and use all reasonable efforts to preserve the properties and relationships with suppliers and customers of such businesses;

(ii) it will cause each Company not to issue or sell any shares of capital stock of such Company, or issue or sell any options, warrants or other rights of any kind to acquire any such shares or securities convertible into or exchangeable for, or which otherwise confer on the holder thereof any right to

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acquire, any such shares, or enter into any agreement obligating it to do any of the foregoing;

(iii) except for the contemplated transfer of assets from Seller to Newco, it will not, other than in the ordinary course of business, cause the transfer of any material assets or contracts, or hire, fire or transfer any key employees to or from any subsidiary, division or other business unit within or among the Companies;

(iv) it will cause each of the Companies not to change or amend its charter, by-laws or other organization agreements;

(v) it will cause the Companies not to acquire or to dispose of any property, right or other asset employed in the business of the Companies, other than in the ordinary course of business (it being understood that the purchase or sale of talc reserves shall not be considered in the ordinary course of business for purposes of this paragraph (v));

(vi) it will cause the Companies to or will itself keep in full force and effect insurance on assets and Real Property and other property of the Companies or for the benefit of employees of the Companies, liability and other casualty insurance related to the Companies, and bonds on personnel of the Companies in accordance with the past practices of the Companies, and it will ensure that all proceeds received under such insurances will remain assets of the Companies at the Closing or will be transferred to the Companies prior to the Closing;

(vii) it will cause the Companies not to enter into or to amend any employment, bonus, severance or retirement contract or arrangement or any employee benefit plan with regard to the Companies;

(viii) it will cause the Companies not to increase any salary or other form of compensation payable or to become payable to any of the executives or employees of the Companies, or to pay any bonuses to any of such executives or employees, except for payments made in the ordinary course and for such payments to be made pursuant to the bonus or profit sharing provisions of the employment agreements listed on Schedule 5.14 hereto;

(ix) it will cause the Companies not to enter into, make, agree upon or to agree to enter into

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(A) other than in the ordinary course, any contract, purchase or sale order, or other commitment, or (B) any real property lease requiring an expenditure or payment in excess of [REDACTED] per annum or which cannot be terminated by the relevant Company within a period not exceeding 12 months;

(x) it will cause the Companies not to incur any debt or obligation for borrowed funds and not to extend credit in the sale of products, collection of receivables or otherwise, other than in the ordinary and regular course of business;

(xi) it will cause the Companies not to take any action and not to cause any action to be taken by any party, which action would materially and adversely affect the businesses of any of the Companies, including, without limitation, the state of title of any of the Companies in and to any material portion of the Real Property. It will not permit any Company to fail to exercise any option to extend or exercise any option to terminate any Lease between the date hereof and the Closing without Buyer's prior written consent as to each such non-extension or termination of any Lease, or amend or modify any such Lease except in the ordinary course;

(xii) it will not permit any of the Companies to wind up, liquidate or dissolve or to enter into any transaction of merger or consolidation; and

(xiii) it will not, and it will not permit any of the Companies to, agree to take any of the foregoing actions.

(b) Seller and Buyer agree that all intercompany accounts between Seller or any Affiliate of Seller (other than a Company) and any Company shall be settled with payment effective prior to the Closing and to the extent such settlement is not feasible at or prior to the Closing, shall be settled as soon as practicable after Closing, and such settlement shall be effective as of prior to Closing.

7.4. Employee Matters. (a) Ongoing Employment. Buyer shall ensure that all persons who were employed by any Company immediately preceding the Closing Date, including those on vacation, leave of absence or disability (whether short-term or long-term disability or workers's compensation) and those subject to or on lay-off (but only, in the case of employees subject to or on lay-off, to the extent a collective bargaining agreement providing for

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recall rights is applicable to such employees) ("Active Employees", which term shall be defined as those individuals identified above), will be employed by Buyer or any Affiliate of Buyer (including but not limited to the Companies) on the Closing Date, on substantially the same terms (regarding salary, job responsibility and location but excluding retirement and welfare benefits) as those provided to such Active Employees immediately prior to the Closing Date. The employment of any Active Employee by Buyer on the Closing Date does not create a right to ongoing employment with Buyer other than may exist under a collective bargaining agreement or an individual agreement.

(b) Welfare Benefit Plans.

(i) Seller shall retain the responsibility for providing for payment of all (A) claims of Employees under any medical, dental, hospital or health plans for previously documented physical or mental conditions in existence on the Closing Date, and provided that a claim for such condition is made within one year of the Closing Date, and (B) claims incurred under any life insurance plans for death occurring prior to the Closing Date.

(ii) Seller shall retain the responsibility for providing for payments of all long-term disability claims (including long-term disability claims that result from continuous short-term disability claims in existence on the Closing Date) arising from disabilities of Employees that occurred prior to the Closing Date and up until such time as the Employee returns to work with the relevant Company on a full-time, unrestricted basis for at least 30 days. Buyer shall assume the responsibility for providing for payments of all short-term disability claims arising from such disabilities.

(iii) Seller shall retain the responsibility for providing for payments of all worker's compensation claims made on or before the Closing Date, provided, however, that Seller shall only be liable under this paragraph (iii) for payments in excess of the amount accrued with respect thereto on the Final Closing Statement. Buyer shall assume the responsibility for providing for payments of all worker's compensation claims made after the Closing Date.

(iv) Seller shall retain the responsibility for providing Non-Represented Employees who retired (or if applicable who terminated with vested benefits) prior to the Closing Date with retiree health and life

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benefit under the Benefit Plan(s) which covered such Employees prior to the Closing Date. As of the Closing Date, Buyer assumes all liabilities for vested and non-vested post-retirement medical and life insurance-benefits with respect to Non-Represented Employees who are Active Employees.

(v) Seller shall retain the responsibility for providing Employees who terminated employment with the relevant Company prior to the Closing Date (and their "qualified beneficiaries" within the meaning of Section 4980B of the Code) with the continuation of group health coverage required by Section 4980B of the Code.

(vi) Buyer shall assume Seller's obligations and responsibilities under all collective bargaining agreements covering Employees.

(c) Pension Plans.

(i) Effective as of the Closing Date, Buyer shall amend an appropriate pension plan to be designated by Buyer (the "Buyer Pension Plan") to provide that (A) upon the transfer of assets referred to below, the service of Active Employees who participated in the Retirement Plan for Salaried Employees of Cyprus Minerals Company or the Cyprus Industrial Minerals Company Division Pension Plan for Yellowstone Mine Hourly Employees (the "Seller Pension Plans") shall be recognized for all purposes thereunder (including benefit accrual) to the extent such service was recognized under the relevant Seller Pension Plan and (B) upon such transfer, the accrued benefits under the Buyer Pension Plan of Active Employees who participated in either of the Seller Pension Plans shall in no event be less than their accrued benefits under such Seller Pension Plan as of the Closing Date.

As soon as reasonably practicable, but in any event (unless both Buyer and Seller otherwise agree) within 180 days after the Closing Date, Seller shall cause to be transferred from the trusts under the Seller Pension Plans to the trust under the Buyer Pension Plan an amount in cash equal to the actuarial present value of the "benefit liabilities" (within the meaning of Section 4001(a)(16) of ERISA) as of the Closing Date of Active Employees who participated in either of the Seller Pension Plans, together with interest at the rate of 8½ per annum from the Closing Date to the date of transfer. Determination of such actuarial present value shall be the Base Present

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Value, provided, however, that if the Alternate Present Value exceeds the Base Present Value by more than [REDACTED], the actuarial present value shall be the Base Present Value plus [REDACTED] of the difference between the Alternate Present Value and the Base Present Value. As used herein, the "Base Present Value" shall mean the actuarial present value determined on the basis of the actuarial assumptions used in preparing the Cyprus Minerals Company Annual Report and [REDACTED] as of December 31, 1991 plus [REDACTED] of the actuarial present value so determined, and the "Alternate Present Value" shall mean the actuarial present value based on the actuarial assumptions used in preparing the Cyprus Minerals Company Annual Report and [REDACTED] as of December 31, 1991, modified to (x) assume that a proportion of Employees will receive benefits upon termination or retirement under the lump sum option based upon the calculation practices currently used by Seller (including any non-qualified supplements that may be applicable) and upon deferred (or immediate, if applicable) Pension Benefit Guaranty Corporation interest rates, and (y) base the proportion of Employees assumed to take the lump sum option on the actual experience under the Seller Pension Plans over the last two years, taking into account the age and service of the Employees at termination or retirement. Such actuarial present values shall be calculated as at the Closing Date by an actuary appointed by Seller and agreed to by an actuary appointed by Buyer, and shall be reduced by the amount of any benefit payments made with respect to Active Employees after the Closing Date but prior to the date of transfer.

Pending completion of the transfers described in this paragraph (i), Seller and Buyer shall make arrangements for any required benefit payments to Employees from the relevant Seller Pension Plan. Seller and Buyer shall provide each other with access to information reasonably necessary in order to carry out the provisions of this Section.

(ii) Effective as of the Closing Date, Seller shall amend the Retirement Plan for Employees of Windsor Minerals Corporation Represented by Cement, Lime, Gypsum and Allied Workers Division of the Brotherhood of Boilermakers International, A.F.L.-C.I.O., local lodge D449 (the "Windsor Plan") and Cyprus Industrial Minerals Company Division Pension Plan for Three Forks Plant Hourly Employees (the "Three Forks Plan") to make the Buyer the "plan sponsor" (as such term is defined in Section 3(16)(B) of ERISA thereunder. Seller shall cause to be transferred, as

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soon as reasonably practicable, but in any event (unless both Buyer and Seller otherwise agree) within 180 days after the Closing Date, to a trust established by Buyer under the Windsor Plan and the Three Forks Plan, all assets attributable to such Plans held under the Cyprus Minerals Company Master Trust.

(iii) Seller shall continue to make contributions to these plans when due as required until the Closing Date. Buyer shall be responsible for making required contributions when due to these plans after the Closing Date. With respect to the Three Forks Plan and the Windsor Plan, the required contributions for 1991 and 1992 for purposes of this Agreement shall be the minimum required contribution under Section 412 of the Code as determined by an actuary appointed by Seller. Seller's share of the required contribution for 1991 will be the entire required contribution for 1991. Seller's share of the required contribution for 1992 shall be determined by multiplying the total required contribution for 1992 by the fractional portion of 1992 preceding the Closing Date. Buyer's share of the required contribution for 1992 shall be the total required contribution for 1992 minus Seller's share of the required contribution for 1992. If actual contributions to these plans by Seller exceeds Seller's share of the required contributions then Buyer shall reimburse Seller for the amount of such excess. If Seller's share of the required contributions exceeds Seller's actual contributions then Seller shall reimburse Buyer for the amount of such excess.

(iv) Buyer shall assume Seller's liability under the Grand Island, Nebraska Multiemployer Pension Plan for Members of General Drivers and Helpers Local Union #544 Affiliated with the International Brotherhood of Teamsters Afl-CIO.

(d) European Pension Liabilities. Buyer shall assume all liabilities and assets for all Benefit Plans listed on Schedule 5.14 that cover foreign employees of the Companies or the European Companies.

(e) Buyer shall assume responsibility for all liabilities, including but not limited to severance benefit liabilities and any withdrawal liabilities, arising because of Buyer's actions or omissions regarding Seller's then former Employees after the Closing Date.

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(f) Savings Plan.

(i) Effective as of the Closing Date, Buyer shall amend an appropriate savings plan to be designated by Buyer (the "Buyer Savings Plan") to provide that (A) the service of Active Employees who participated in the Cyprus Minerals Company Savings Plan and Trust (the "Seller Savings Plan") shall be recognized for all purposes thereunder to the extent such service was recognized under the Seller Savings Plan and (B) the account balances of such Employees which are transferred from the Seller Savings Plan to the Buyer Savings Plan in accordance with this paragraph shall be fully vested at all times.

As soon as reasonably practicable, but in any event (unless both Buyer and Seller otherwise agree) within 180 days after the Closing Date, Sellers shall cause to be transferred from the Seller Savings Plan to the Buyer Savings Plan the liability for the account balances of Active Employees who participated in the Seller Savings Plan, together with assets the fair market value of which is equal to such liability.

(ii) Pending the completion of the transfer described in paragraph (i), Seller and Buyer shall make arrangements for any required benefit payments to Employees from the Seller Savings Plan. Seller and Buyer shall provide each other with access to information reasonably necessary in order to carry out the provisions of this Section.

(g) ESOP. Seller shall take all necessary actions to provide that all Active Employees are fully vested in the amounts credited to their accounts under the Cyprus Minerals Company Amended and Restated Employee Stock Ownership Plan as of the Closing Date.

(h) Indemnity. Seller agrees to defend, indemnify and hold harmless the Buyer Indemnitees against and in respect of any Damages caused by, resulting or arising from or otherwise relating to any Breach of any of Seller's responsibilities or obligations under this Section 6.4, and Buyer agrees to defend, indemnify and hold harmless the Seller Indemnities against and in respect of any Damages caused by, resulting or arising from or otherwise relating to any Breach of any of Buyer's responsibilities or obligations under this Section 6.4. The obligations of this Section 6.4 shall survive the Closing Date without limitation as to time. For purposes of this paragraph (h), the terms Buyer Indemnitees, Damages, Breach and Seller

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Indemnities have the respective meanings ascribed thereto in Section 11.1.

7.5. Tax Matters. (A) Section 338(h)(10). Neither Buyer nor Seller nor any of their respective Affiliates shall make any election pursuant to Section 338(h)(10) of the Code. Seller understands that, Buyer may make and may cause each member of its affiliated group (as defined in Section 338(h)(5) of the Code) to join in a protective carryover basis election as provided for by regulations under Section 338(e) of the Code. With regard to this election, Seller will fully cooperate and join in the election, if necessary.

(B) Liability for Taxes and Related Matters.

(i) Liability for Taxes. Seller shall be liable for and indemnify Buyer for all Taxes (including, without limitation, any obligation to contribute to the payment of a tax determined on a consolidated, combined or unitary basis with respect to a group of corporations that includes or included any of the Companies and Taxes resulting from any of the Companies ceasing to be a member of the Seller's Group) (a) imposed on Seller's Group (other than any Taxes described in the following clause (b) of the Companies for any taxable year), (b) imposed on any of the Companies or for which any of the Companies may otherwise be liable (i) for any taxable year or period that ends on or before the Closing Date and, (ii) with respect to any taxable year or period beginning before and ending after the Closing Date, for that portion of such taxable year ending on and including the Closing Date. Except as set forth in (v), Seller shall be entitled to any refund of Taxes of any of the Companies received for such periods.

(ii) Buyer shall be liable for and indemnify Seller for the Taxes of any of the Companies for any taxable year or period that begins after the Closing Date and, with respect to any taxable year or period beginning before and ending after the Closing Date, for that portion of such taxable year beginning after the Closing Date. The Buyer shall be entitled to any refund of Taxes of any of the Companies received for such periods.

(iii) Taxes for Short Taxable Year. For purposes of paragraphs (B)(i) and (B)(ii), whenever it is necessary to determine the liability for Taxes of any of the Companies for a portion of a taxable year or period that begins before and ends after the Closing

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Date, the determination of the Taxes of any Company for the portion of the year or period ending on, and the portion of the year or period beginning after, the Closing Date shall be determined by assuming that such Company had a taxable year or period which ended at the close of the Closing Date, except that exemptions, allowances or deductions that are calculated on an annual basis, such as the deduction for depreciation, shall be apportioned on a time basis.

(iv) If, as a result of a challenge by any taxing authority to any transaction that had been treated or a tax-free transaction under Section 351 of the Code or any similar provision under state tax law, such taxing authority determines the adjusted tax basis in an asset of Newco, including the stock in any of the Other Companies, as of the Closing Date to be less than the Carryover Basis (as defined below), then Seller shall indemnify Buyer to the extent that the Carryover Basis of such asset would have produced greater tax benefits to Buyer. Payment under this paragraph shall be made at the time the adjusted tax basis in an asset of Newco is determined to be other than the Carryover Basis and shall equal the highest marginal corporate tax rate in effect on the Closing Date multiplied by the difference between the Carryover Basis and the redetermined adjusted tax basis; provided, however, that for the purposes of computing such payment, a reduction in the basis of one or more assets shall not be taken into account to the extent that the determination that resulted in a reduction in the basis of such assets also resulted in the increase in the basis in inventory, receivables or other current assets, or any asset that is amortizable, depreciable or depletable under the applicable tax law in effect on the date that such determination is made. As used herein, the term "Carryover Basis" means the adjusted tax basis in the asset as of December 31, 1991 reduced by any depreciation, depletion or other such allowance (or, in the case of stock in any of the Other Companies, by the adjustments provided for in section 1.1502-32 of the income tax regulations) properly attributable to the period between December 31, 1991 and the Closing Date.

(v) Adjustment to Purchase Price. Any payment by Buyer or Seller under this Section will be an adjustment to the Purchase Price.

(vi) Refunds from Carrybacks. If Seller becomes entitled to a refund or credit of Taxes for any period for which it is liable under paragraph (B)(i) to

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indemnify Buyer and such refund or credit is attributable solely (or in part) to the carryback of losses, credits or similar items from either a taxable year or period that begins after the Closing Date or in the case of a taxable year or period that begins before and ends after the Closing Date, that portion of the taxable year or period that begins after the Closing Date (determined under the principles of paragraph (B)(iii)), and is attributable to any of the Companies, Seller shall promptly pay to the Buyer the amount of such refund or credit (or a pro-rata share of such refund or credit if due only in part to the carryback of such losses, credits or similar items) together with any interest thereon. In the event that any refund or credit of Taxes for which a payment has been made is subsequently reduced or disallowed, the Buyer shall repay any amounts paid to it by the Seller pursuant to this paragraph and indemnify and hold harmless the Seller for any interest and penalties assessed against Seller by reason of the reduction or disallowance. Provided, however, that the preceding sentence shall not apply if the reduction or disallowance is caused by Seller's computational error.

(vii) Returns. Seller shall file or cause to be filed when due all Returns with respect to Taxes that are required to be filed by or with respect to any of the Companies for taxable years or periods ending on or before the Closing Date and shall pay any Taxes due in respect of such Returns, and Buyer shall file or cause to be filed when due all Returns with respect to Taxes that are required to be filed by or with respect to any of the Companies for taxable years or periods ending after the Closing Date and shall remit any Taxes due in respect of such Returns. Each of the Companies shall retain an officer of Seller for the sole purpose of signing the Returns that Seller is required to file pursuant to this paragraph. Seller shall pay Buyer the Taxes for which Seller is liable pursuant to paragraph (B)(i) but which are payable with Returns to be filed by Buyer pursuant to the previous sentence not less than two business days prior to the due date for the payment of such Taxes. Buyer shall provide Seller with its then best estimate of these taxes 10 business days prior to the due date for payments of such Taxes. Notwithstanding the foregoing, with regard to taxes for periods that begin before but end after the Closing Date, Seller shall be entitled to reduce its payment under this paragraph to Buyer to the extent of the amount accrued by the Company making the payment on the Company's balance sheet as of the Closing Date. With regard to taxes for periods that begin before but end

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after the Closing Date, Buyer shall pay Seller, within five (5) business days of making a payment for the applicable taxes to a tax authority, any amounts accrued on the Final Closing Statement of the Company making the payment, for the particular liability for tax, in excess of the applicable tax.

(viii) Contest Provisions. Buyer shall promptly notify Seller in writing upon receipt by Buyer, any of its Affiliates or any of the Companies of notice of any pending or threatened audit or assessment by any federal, state, local or foreign taxing authorities which may affect the tax liabilities of any of the Companies for any periods for which Seller would be required to indemnify Buyer pursuant to paragraph (B)(1), provided that failure to comply with this provision shall not affect Buyer's right to indemnification hereunder. Seller shall have the sole right to represent any Company's interests in any tax audit or administrative or court proceedings relating to taxable periods ending on or before the Closing Date, and to employ counsel of its choice at its expense. Notwithstanding the foregoing, Seller shall not be entitled to settle, either administratively or after the commencement of litigation, any claim for Taxes which would adversely affect the liability for Taxes of the Buyer or any of the Companies for any period ending after the Closing Date to any extent (including, but not limited to, the imposition of income tax deficiencies, the reduction of asset basis or cost adjustments, the lengthening of any amortization or depreciation periods, the denial of amortization or depreciation deductions, or the reduction of loss or credit carryforwards) without the prior written consent of Buyer. Such consent shall not be unreasonably withheld, and shall not be necessary to the extent that Seller has indemnified the Buyer against the effects of any such settlement. Buyer shall have the sole right to represent any Company's interest in any tax audit or administrative or court proceeding for any taxable year or period that begins before but ends after the Closing Date. Neither Buyer nor any of the Companies may agree to settle any tax claim for the portion of the year or period ending on the Closing Date which may be the subject of indemnification by Seller under paragraph (B)(1) without the prior written consent of Seller, which consent shall not be unreasonably withheld.

(ix) Termination of Tax Allocation Agreements. Any tax allocation or sharing agreement or arrangement, whether or not written, that may have been

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entered into by Seller or any member of Seller's Group and any of the Companies shall be terminated as to each of the Companies as of the Closing Date, and no payments which are owed by or to any of the Companies pursuant thereto shall be made thereunder.

(C) Transfer Taxes. Seller and Buyer shall each be liable for one half the transfer, sales, use or other similar taxes arising under any state, local or foreign law from the sale of the Shares, including any real property transfer taxes. Buyer and Seller shall cooperate fully in making any payment, withholding any amount or filing any return or information which is required with respect to a transfer, sales, use or other similar tax described in the preceding sentence. The party responsible under state, local or foreign law for making such payment, withholding such amount or filing such return or information with respect to such transfer, sales, use or other similar taxes shall undertake to fulfill that responsibility; provided, however, that Seller must inform Buyer of any payment that must be made by Buyer, amount that must be withheld by Buyer or return or information that must be filed by Buyer with respect to such transfer, sales, use or other similar taxes.

(D) Information to be Provided by Buyer. With respect to the periods in 1992 prior to the Closing Date, Buyer shall promptly cause each of the Companies to prepare and provide to Seller a package of tax information materials (the "Tax Package"), which shall be completed in accordance with past practice including past practice as to providing the information, schedules and work papers and as to the method of computation of separate taxable income or other relevant measure of income of each of the Companies. Buyer shall cause the Tax Package described in this paragraph to be delivered to Seller by December 31, 1992.

(E) Assistance and Cooperation. After Closing Date, each of Seller and Buyer shall:

(i) assist (and cause their respective Affiliates to assist) the other party in preparing any Returns or reports with such other party is responsible for preparing and filing in accordance with this Section;

(ii) cooperate fully in preparing for any audits of, or disputes with taxing authorities regarding any Returns of any of the Companies;

(iii) make available to the other and to any taxing authority as reasonably requested all

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information, records, and documents relating to Taxes of any of the Companies;

(iv) provide timely notice to the other in writing of any pending or threatened tax audits or assessments of any of the Companies for taxable periods for which the other may have a liability under this Section; and

(v) furnish the other with copies of all correspondence received from any taxing authority in connection with any tax audit or information request with respect to any such taxable period.

(F) Record Retention. Seller will continue to store and maintain the original copies of any federal, state, local or foreign tax return or report for any year still open for audit by any taxing authority for any period up to and including the taxable years or periods ending on or before the Closing Date and any work papers prepared exclusively for purposes of filing such returns. Seller will provide Buyer with copies of all such returns and work papers that have been prepared within 10 days after the Closing Date and with copies of subsequent returns and work papers as soon as possible after such returns and work papers are prepared. Seller will notify Buyer prior to the destruction of any records mentioned in this subsection (F) and provide Buyer with the option of continuing to store and maintain such records on its own behalf.

(G) Survival of Obligations. The obligations of the parties set forth in this Section shall be unconditional and absolute and shall remain in effect without limitation as to time.

7.6. Insurance. To the extent that (i) there are third-party insurance policies maintained by Seller and its Affiliates (other than the Companies) ("Seller's Insurance Policies") insuring against any loss, liability, damage or expense relating to the assets, businesses, operations, conduct, products and employees (including former employees) of the business of any Company (all such losses, liabilities, claims, damages or expenses, regardless of the availability of insurance coverage, are herein referred to collectively as the "Business Liabilities") and relating to or arising out of occurrences prior to the Closing, and (ii) Seller's Insurance Policies continue after the Closing to permit claims ("Claims") to be made with respect to such Business Liabilities relating to or arising out of occurrences prior to the Closing, Seller agrees to cooperate and cause such Affiliates to cooperate with Buyer and the Companies in submitting Claims on behalf of Buyer or such

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Companies under Seller's Insurance Policies with respect to such Business Liabilities relating to occurrences prior to the Closing.

7.7. Books and Records. Except for tax records covered by Section 7.6(F), Buyer will, and will cause each Company to, for a period of six years after the Closing, retain all books, records and other documents pertaining to the businesses of the Companies in existence on the Closing Date and to make the same available after the Closing Date for inspection and copying by Seller or any Affiliate of Seller at Seller's expense during the normal business hours of Buyer or such Company, as applicable, upon reasonable request and upon reasonable notice. Without limiting the generality of the foregoing, Buyer will, and will cause each Company to, make available to Seller, the Affiliates of Seller and their respective representatives all information deemed necessary or desirable by Seller or such Affiliates in preparing their respective financial statements and Tax returns and conducting any audits in connection therewith.

7.8. Announcements. Prior to the Closing, neither Seller nor Buyer will issue any press release or otherwise make any public statement with respect to this Agreement and the transactions contemplated hereby without the prior written consent of the other (which consent shall not be unreasonably withheld), except as may be required by applicable law, stock exchange regulation or in connection with Buyer obtaining the approval of its shareholders.

7.9. Interim Use of Names. Except as provided in this Section 7.9, no interest in or right to use the name "Cyprus" or any derivation or logo thereof is being transferred hereunder. The parties agree that Buyer shall, as promptly as practicable but in any event within forty-five (45) days following the Closing Date, file an amendment with the appropriate authorities to eliminate the name Cyprus from the name of each Company, and within one year following the Closing Date, remove or obliterate all such trade names, trademarks and logos from all signs, purchase orders, invoices, sales orders, packaging stock, labels, letterheads, shipping documents and other materials used by it or any of its Affiliates (including but not limited to the Companies). For a period of sixty (60) days after the Closing Date, Buyer and its Affiliates (including the Companies) may continue to use any purchase orders, invoices, sales orders, letterheads or shipping documents which bear the name Cyprus, provided that after such sixty (60) days' period, Buyer and its Affiliates (including the Companies) shall cease to use (i) any purchase orders, invoices, sales orders, letterheads or shipping documents existing on the date hereof, which bear the name "Cyprus" or

any name confusingly similar thereto, without first obliterating or covering such name, mark or logo, or (ii) any such materials not in existence on the Closing Date which bear such name, mark or logo. Except to the extent contemplated above, Buyer will not, and will cause each of its Affiliates (including but not limited to the Companies) not to, misappropriate, misrepresent or otherwise infringe, abuse or diminish the value of said names.

7.10. No Shopping. Between the date hereof and the earlier of the Closing Date and the termination of this Agreement, neither Seller nor any of its Affiliates shall, directly or indirectly, through any officer, director or agent or otherwise, in any manner solicit, initiate, encourage, or participate in any negotiation in respect of or cooperate with any person making an Acquisition Proposal (as hereinafter defined). The term "Acquisition Proposal" means any proposal for a merger with the Companies or for the acquisition of all or substantially all the assets of the Companies or the Shares.

7.11. Computer Technology and Other Interim Services. For a period not to exceed six months following the Closing, Seller will provide to the Companies such computer services of the types and of substantially the same standard of service that Seller has provided prior to the date hereof, as and to the extent Buyer shall require, at Seller's cost. Buyer shall only be billed for such services to the extent Seller's cost for such services exceeds [REDACTED]. Buyer shall be responsible for obtaining all required software licenses that are necessary for Seller to provide such computer services to the Companies after Closing. Buyer shall be responsible for all costs associated with obtaining the software licenses required by the Companies and for all costs associated with establishing such computer services separate from Seller's processing systems to provide for adequate security, efficient processing, and transfer of historical data as may be required by Buyer. Nothing herein shall prevent Buyer from contracting directly with Seller's computer services vendor. Buyer, Seller and the Companies, shall use reasonable efforts to minimize data processing costs including costs associated with the utilization of transitional operational systems and software packages. Other transitional support services provided to Buyer and the Companies by Seller after the Closing will be performed at Buyer's expense but at an amount equal to Seller's cost.

7.12. Barite Tolling Agreement. For as long as the Companies operate the Houston Mill lease, or for a maximum of one year from the Closing, if the operation continues after such one year period, Buyer shall provide to

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Seller reasonable barite toll grinding services at the Houston Mill on negotiated fair market value terms. Buyer shall provide Seller, and a purchaser and subsequent purchaser of Seller's facilities to the extent of using it only with respect to such facility, with a non-assignable perpetual, royalty free license to utilize the Nichols classifier technology.

7.13. Best Efforts. Subject to the terms and conditions herein provided, each of Buyer and Seller agree to cooperate and to use their respective best efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement, including, without limitation, obtaining consents under all contracts and agreements, requiring consent to be assigned to Buyer.

7.14. Covenant Not to Compete. (a) Subject to Seller's right to engage in the barite business, for a period of five years after the Closing, Seller will not, and will cause each of its Affiliates not to engage in any talc business that directly, or indirectly, competes with the businesses of the Companies, as conducted on the Closing Date; provided, however, that nothing contained in this Section 7.14(a) shall prohibit Seller or any of its Affiliates from acquiring any company or business which has, as a non-primary business, a talc business.

(b) For a period of five years after the Closing, Buyer will not, and will cause each of its Affiliates not to engage in any barite business that directly, or indirectly, competes with the barite business of Seller, as conducted on the Closing Date; provided, however, that nothing contained in this Section 7.14(b) shall prohibit Buyer or any of its Affiliates from acquiring any company or business which has, as a non-primary business, a barite business.

(c) After the Closing, Seller will not, and will cause each of its Affiliates not to, utilize the trade secrets to be transferred to Buyer pursuant to this Agreement to engage in any business that directly, or indirectly, competes with the businesses of the Companies, or disclose to any Affiliate or any other person any such trade secrets or, within five years after the Closing, any other confidential information relating to the Companies or its properties, except that Seller may make disclosures, after consultation with Buyer, as required by law or applicable rules of a stock exchange. It is understood that confidential information does not include information which is or becomes publicly available without Seller's fault.

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(d) For a period of three years after the Closing Date, Seller will not and will cause each of its Affiliates not to, except with Buyer's prior written consent (which consent shall not be unreasonably withheld), hire or employ, or solicit the hiring or employment of, any employee of the Companies.

(e) Seller and Buyer agree that, if any provision of this Section 7.14 should be adjudicated to be invalid or unenforceable, such provision shall, to the extent permitted by law, be deemed deleted herefrom with respect, and only with respect, to the operation of such provision in the particular jurisdiction in which such adjudication was made; provided, however, that to the extent any such provision may be made valid and enforceable in such jurisdiction by limitation of the scope of the activities, geographical area or time period covered, Seller and Buyer agree that such provision instead shall be deemed limited to the extent, and only to the extent, necessary to make such provision enforceable to the fullest extent permissible under the laws and public policy applied in such jurisdiction.

7.15 Nihon Mistron. Pursuant to the Agreement of Transfer and Assumption dated June 5, 1992 between Seller and Newco, Seller has agreed to transfer to Newco, its record and beneficial ownership of [REDACTED] of the issued and outstanding shares of Nihon Mistron Company. If Seller is unable to transfer such shares to Newco because the other parties in the joint venture exercise their preemptive right to purchase such shares, the proceeds from such sale shall immediately be delivered to Buyer.

7.16 Hamm Underground Mine Property. The parties have agreed that Seller shall retain title to the Hamm Underground Mine Property and shall be responsible for all costs associated with any required clean up of such property. Any required clean up shall be performed as soon as reasonably practicable. At such time as such property is in material compliance with all applicable Environmental Laws, Buyer shall have the option to purchase such property for one dollar in cash.

7.17 Buyer's Insurance. For as long as Seller may be liable to indemnify Buyer pursuant to this Agreement, Buyer agrees to maintain business interruption insurance for the Companies in a manner and amount reasonable for a Company engaged in the same business as the Companies in the same area.

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ARTICLE 8

CONDITIONS PRECEDENT OF SELLER

The obligation of Seller to consummate the transactions described in Article 2 hereof is subject to the fulfillment of each of the following conditions prior to or at the Closing:

8.1. Representations and Warranties. The representations and warranties of Buyer made hereunder shall be true in all material respects at and as of the Closing Date, with the same force and effect as though made at and as of the Closing Date, except for changes permitted or contemplated by this Agreement and except to the extent that any representation or warranty is made as of a specified date, in which case such representation or warranty shall be true in all material respects as of such date.

8.2. Agreements. Buyer shall have performed and complied in all material respects with all its undertakings and agreements required by this Agreement to be performed or complied with by Buyer prior to or at the Closing.

8.3. Buyer Certificate. Seller shall have been furnished with certificates of an authorized officer of Buyer, dated the Closing Date, certifying to the effect that the conditions contained in Sections 8.1 and 8.2 have been fulfilled.

8.4. No Injunction. No injunction, restraining order or decree of any nature of any court or governmental or regulatory authority shall exist against Buyer, Seller, Cyprus, any Company or any of their respective Affiliates, or any of the principals, officers or directors of any of them, that restrains, prevents or materially changes the transactions contemplated hereby.

8.5. Consents. All material consents, approvals and authorizations of governmental and regulatory authorities, and all material filings with and notifications of governmental authorities and regulatory agencies or other entities which regulate the business of Seller, any Company or Buyer, necessary on the part of Seller, any Company or Buyer, or their respective Affiliates, to the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, shall have been obtained or effected (and all applicable waiting periods, if any, including any extensions thereof, under any applicable law, statute, regulation or rule, including but not limited to the HSR Act shall have expired or terminated, as applicable).

8.6. Miscellaneous Closing Deliveries. Seller shall have received such evidence as Seller may reasonably request in order to establish (i) the power and authority of Buyer to consummate the transactions contemplated by this Agreement and (ii) compliance with the conditions of Closing set forth herein.

ARTICLE 9

CONDITIONS PRECEDENT OF BUYER

The obligation of Buyer to consummate the transactions described in Article 2 hereof is subject to the fulfillment of each of the following conditions prior to or at the Closing:

9.1. Representations and Warranties. The representations and warranties of Seller and Cyprus made hereunder shall be true in all material respects at and as of the Closing Date, with the same force and effect as though made at and as of the Closing Date, except for changes permitted or contemplated by this Agreement and except to the extent that any representation or warranty is made as of a specified date, in which case such representation or warranty shall be true in all material respects as of such date; provided that Buyer may not invoke this Section 9.1, unless the untruthfulness of the representations and warranties in the aggregate constitute a material adverse change, or unanticipated and undisclosed material liability previously unknown to Buyer which would have a material adverse effect, on the talc business of the Companies as a whole.

9.2. Agreements. Seller shall have performed and complied in all material respects with all of its undertakings and agreements required by this Agreement to be performed or complied with by it prior to or at the Closing; provided that Buyer may not invoke this Section 9.2, unless the non-compliance, in the aggregate would have a material adverse effect, on the talc business of the Companies as a whole.

9.3. Seller Certificate. Buyer shall have been furnished with a certificate of an authorized officer of Seller, dated the Closing Date, certifying to the effect that the conditions contained in Sections 9.1 and 9.2 have been fulfilled.

9.4. No Injunction. No injunction, restraining order or decree of any court or governmental or regulatory

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authority shall exist against Buyer, Seller, Cyprus, any Company or any of their respective Affiliates, or any of the principals, officers or directors of any of them, that restrains, prevents or materially changes the transactions contemplated hereby.

9.5. Consents. All material consents, approvals and authorizations of governmental and regulatory authorities, and all filings with and notifications of governmental authorities and regulatory agencies or other entities which regulate the business of Seller, any Company or Buyer, necessary on the part of Seller, any Company or Buyer, or their respective Affiliates, to the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, shall have been obtained or effected (and all applicable waiting periods, if any, including any extensions thereof, under any applicable law, statute, regulation or rule, including but not limited to the HSR Act shall have expired or terminated, as applicable); provided that Buyer may not invoke this Section 9.5 unless the failure to obtain or effect such consents, approvals and authorizations, in the aggregate would have a material adverse effect, on the talc business of the Companies as a whole.

9.6. Miscellaneous Closing Deliveries. Buyer shall have received such evidence as Buyer may reasonably request in order to establish (i) the power and authority of Seller and Cyprus to consummate the transactions contemplated by this Agreement and (ii) compliance with the conditions of Closing set forth herein.

9.7. Newco Closing. The Closing of the transactions contemplated in the Agreement of Transfer and Assumption dated June 5, 1992 between Seller and Newco shall have occurred to Buyer's reasonable satisfaction.

9.8. J&J Non-Termination. Johnson & Johnson Consumer Products, Inc. ("J&J") shall not have given notice of termination to Cyprus or its Affiliates or to Buyer pursuant to the Talc Supply Agreement by and between Windsor Minerals Inc. and J&J, dated January 6, 1989.

ARTICLE 10

SURVIVAL OF REPRESENTATIONS AND WARRANTIES

10.1. Survival of Representations and Warranties.

(a) Except as specified in Section 10.1(b) hereof, all representations and warranties of Seller

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included or provided for herein or in any schedule or in any certificate or other document delivered pursuant to this Agreement shall survive for a period of one year after the Closing Date and shall thereafter expire except with respect to breaches and violations theretofore specified, in writing in accordance with Section 11.5, to Seller by Buyer, the Companies or their successors.

(b) The representations and warranties contained in Sections 5.1, 5.3, 5.4 and 5.13 of this Agreement shall survive the Closing Date until the expiration of the limitation period under the applicable statutes of limitations (or any extensions thereof) and thereafter shall expire except with respect to breaches or violations theretofore specified, in writing in accordance with Section 11.5, to Seller by Buyer, the Companies or their successors. The representations and warranties contained in Section 5.16 of this Agreement shall survive for a period of thirty (30) months after the Closing and shall thereafter expire except with respect to breaches or violations theretofore specified, in writing in accordance with Section 11.5, to Seller by Buyer, the Companies or their successors.

ARTICLE 11

INDEMNIFICATION

11.1. Indemnification of Buyer and its Affiliates. Subject to Section 11.4, Seller and Cyprus, jointly and severally, agree to defend, indemnify and hold harmless Buyer, its Affiliates and its successors and assigns (individually, a "Buyer Indemnatee", and collectively, the "Buyer Indemnities") against and in respect of:

(a) any and all losses, claims, damages, liabilities, costs and expenses ("Damages") caused by, resulting or arising from or otherwise relating to (i) any failure by Cyprus or Seller to perform or otherwise fulfill or comply with any provision of this Agreement; (ii) any breach or violation ("Breach") of any representation or warranty of Cyprus or Seller hereunder, or (iii) any claim arising out of or relating to the operation of the businesses of any of the Companies or either of the European Companies prior to the Closing as to which Buyer has given written notice to Seller within one year of the Closing Date;

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(b) any and all actions, suits, proceedings, claims, liabilities, demands, assessments, judgments, costs and expenses, including reasonable attorneys' fees, directly relating to such indemnification.

11.2. Indemnification of Seller and Its Affiliates. Subject to Section 11.4, Buyer agrees to defend, indemnify and hold harmless Seller and Seller's Affiliates, and their respective successors and assigns (individually, a "Seller Indemnitee", and collectively, the "Seller Indemnities") against and in respect of:

(a) any and all Damages caused by, resulting or arising from or otherwise relating to (i) any failure by Buyer to perform or otherwise fulfill or comply with any provision of this Agreement, or (ii) any Breach of any representation or warranty of Buyer hereunder;

(b) any and all actions, suits, proceedings, claims, liabilities, demands, assessments, judgments, costs and expenses, including reasonable attorneys' fees, directly relating to such indemnification.

11.3. (a) Environmental Indemnification. Subject to Section 11.3(c), and except to the extent disclosed in Schedule 11.3 or to the extent Dr. Graham B. Lawson, J. Stevenson, Richard Gaunt or John Paulson has actual knowledge on the date hereof of a matter that would give rise to a valid claim under (ii), (iii) or (iv) below, with respect to any written claim, specifying in reasonable detail to the extent known, made by Buyer within thirty (30) months of the Closing Date, Seller and Cyprus shall jointly and severally indemnify and hold Buyer Indemnitee harmless from and against any and all damages, losses, liabilities, actions, claims, costs and expenses (including, without limitation, removal costs, remediation costs, fines, penalties, expenses of investigation and ongoing monitoring, and reasonable attorney's fees) ("Losses") directly or indirectly based upon, arising out of, resulting from or relating to (i) any action taken by Seller with respect to the Hamm Underground Mine Property or any liability under Environmental Law relating to a present condition at the Hamm Underground Mine Property, (ii) any violation of any Environmental Law by the Companies or their predecessors or any of its employees, representatives, agents or any other person or entity acting on behalf of the Companies prior to the Closing (including, without limitation, any failure to obtain or comply with any permit, license or other approval or authorization under the provisions of any Environmental Law), (iii) any and all liabilities under any Environmental Law arising on or prior to the Closing out of or otherwise in respect of any act, omission, event, condition or

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circumstance occurring or existing in connection with the Companies or the properties owned or operated by the Companies or their predecessors at any time prior to the Closing (including, without limitation, liabilities relating to investigation, removal, remediation, containment, cleanup or abatement of the presence, Release or threatened Release of any Hazardous Substance, whether on-site or off-site) and (iv) any and all expenditures required to be incurred by the Companies (x) to enable them to operate in compliance with all applicable Environmental Laws and (y) to repair and restore all damage to any building, land or property of the Companies arising out of or relating to the removal, remediation, cleanup or abatement of the presence of any Hazardous Substance in violation of any Environmental Law existing on or prior to the Closing in connection with the Companies or the properties owned or operated by the Companies or their predecessors at any time prior to the Closing; provided, however, that Seller shall not have any liability pursuant to this Section 11.3(a) for claims brought by private individuals where there is no violation or liability under any Environmental Law. The indemnity provided in this Section 11.3 shall be without regard to any purported availability of insurance.

(b) If any governmental authority (whether federal, foreign, state or local) or if any Environmental Law shall require Buyer or any Company to effect or take any removal, remedial, corrective or similar actions ("Remedial Action"), or if any third party makes any other claim which is to be the basis for a claim for indemnification under Section 11.3 ("Other Environmental Claim"), then Buyer shall prior to taking any Remedial Action or having discussions with or reporting to the governmental authority (except in situations requiring immediate action under the applicable Environmental Law or emergency situations to preserve life or property) give prompt written notice to Seller of the required Remedial Action or the Other Environmental Claim. Seller, at its option, by notice to Buyer given within thirty (30) days of Buyer's notice to Seller of the Remedial Action or Other Environmental Claim (or such shorter periods specified in Buyer's notice if the ordering governmental agency requires that action be taken more promptly than such thirty (30) day notice period would allow, or if Buyer reasonably determines that the existing condition which is the subject of the Remedial Action or Other Environmental Claim requires that action be taken more promptly than such thirty (30) day period would allow) shall (i) assume control of and effect such Remedial Action or defend such Other Environmental Claim at its cost and expense, or (ii) permit Buyer to control and effect such Remedial Action or defend such Other Environmental Claim at Seller's cost and expense. Any and all costs and expenses incurred or paid by Seller or

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by Buyer on Seller's account hereunder shall be considered within the term Losses and be subject to the limitations set forth in Section 11.3(c). Buyer and Seller shall cooperate with each other and shall have a right to participate in discussions with applicable government authorities in effecting any Remedial Action with a view toward promptly completing any Remedial Action, minimizing the disruptive effect of any Remedial Action on the conduct of the businesses of the Companies, avoiding the incurrence of additional environmental liabilities with respect to the existing condition as to which the Remedial Action is taken and performing any Remedial Action at the lowest reasonable cost. All Remedial Action performed by Buyer shall be performed at the lowest reasonable cost, taking into consideration the matters set forth in the preceding sentence, and subject to audit by Seller. Costs in excess of such lowest reasonable cost shall be for Buyer's account. Seller may not settle or compromise any claim by any governmental authorities relating to a Remedial Action or Other Environmental Claim, without Buyer's prior written consent (which consent may not be unreasonably withheld). Buyer may not settle or compromise any claim by any governmental authorities relating to a Remedial Action or Other Environmental Claim, without Seller's prior written consent (which consent may not be unreasonably withheld). If Seller elects to assume control of a Remedial Action, Buyer shall provide Seller reasonable access to the relevant properties to allow Seller to complete such Remedial Action. Buyer shall, at Seller's expense, provide reasonable access to the properties of the Companies, to the extent reasonably required by Seller in order for Seller to take Remedial Action with respect to the Hamm Underground Mine Property, provided that such access shall not have any disruptive effect on the businesses of the Companies or expose the Companies to any potential material liability.

(c) With respect to the operating sites of the Companies set forth on Schedule 11.3A, Seller's liability for Losses pursuant to Section 11.3(a) shall not include any liability for closure costs or reclamation costs, and shall not in the aggregate exceed an amount equal to the Purchase Price; provided, however, that no claim for any single item may be made under this Section 11.3 unless and until the amount of such claim exceeds [REDACTED] in which case Seller and Cyprus shall be liable for the whole amount of such claim. With respect to the sites of the Companies not set forth on Schedule 11.3A, Seller's liability for Losses pursuant to Section 11.3(a) shall include all liabilities for closure and reclamation costs, and shall not be limited to any amount; provided, however, that no claim for any single item may be made under this Section 11.3 unless and until the amount of such claim exceeds [REDACTED], in which

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case Seller and Cyprus shall be liable for the whole amount of such claim; provided, further, however, that if the cost of any Remedial Action on such property is clearly shown, by Seller to the reasonable satisfaction of Buyer, to be in excess of its fair market value, Seller shall instead of taking such Remedial Action have the option to reacquire such property from Buyer for one dollar and shall be solely liable for any costs associated with such property.

11.4. Limitations on Indemnifications. The provisions for indemnity under Sections 11.1(a)(i), (ii) and (b) and 11.2 shall be effective only when the aggregate amount of all claims for which Seller or Buyer is liable under Sections 11.1(a)(i), (ii) and (b) or 11.2, respectively, exceeds [REDACTED], in which case such party shall be liable for all such amounts; provided, however, that in no event shall either Buyer or Seller be liable for more than an amount in the aggregate equal to [REDACTED] for all claims made against it under Sections 11.1(a)(i), (ii) and (b) or 11.2, respectively; provided, further, however, that no claim for any single item may be made, nor shall Seller or Buyer be liable, under Sections 11.1(a)(i), (ii) and (b) or 11.2, respectively, if the amount of such claim is less than [REDACTED] provided, further, however, that no claim may be made for indemnity to the extent the Indemnitee can reasonably, and does actually recover pursuant to an existing business interruption insurance.

11.5. Claims. Any claim for indemnity under Section 11.1 or 11.2 hereof shall be made by written notice from the Indemnitee to the Indemnifying Party specifying in reasonable detail the basis of the claim. Except as otherwise provided herein, when an Indemnitee seeking indemnification under Section 11.1 or 11.2 receives notice of any claims made by third parties ("Third Party Claims") which is to be the basis for a claim for indemnification hereunder, the Indemnitee shall give prompt written notice thereof to the Indemnifying Party reasonably indicating (to the extent known) the nature of such claims and the basis thereof. Upon notice from the Indemnitee, the Indemnifying Party may, but shall not be required to, assume the defense of any such Third Party Claims, including its compromise or settlement, and the Indemnifying Party shall pay all reasonable costs and expenses thereof and shall be fully responsible for the outcome thereof; provided, however, that in such case, the Indemnifying Party shall have no obligation to pay any further costs or expense of legal counsel of the Indemnitee in connection with such defense and, provided, further, that the Indemnifying Person may not settle or compromise any Third Party Claims without the Indemnitee's prior written consent (which consent shall not be unreasonably withheld). The Indemnifying Party shall

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give notice to the Indemnatee as to its intention to assume the defense of any such Third Party Claims within twenty (20) business days after the date of receipt of the Indemnatee's notice in respect of such Third Party Claims. If an Indemnifying Party does not, within twenty (20) business days after the Indemnatee's notice is given, give notice to the Indemnatee of its assumption of the defense of the Third Party Claims, the Indemnifying Party shall be deemed to have waived its rights to control the defense thereof. If the Indemnatee assumes the defense of any Third Party Claims because of the failure of the Indemnifying Party to do so in accordance with this Section 11.4, the Indemnifying Party shall pay all reasonable costs and expenses of such defense and shall be fully responsible for the outcome thereof. The Indemnifying Party shall have no liability with respect to any compromise or settlement thereof effected without its prior written consent (which consent shall not be unreasonably withheld).

11.6. Survival. Notwithstanding anything in this Agreement to the contrary, this Article 11 shall survive termination of this Agreement without limitation.

ARTICLE 12

MISCELLANEOUS

12.1. Further Assurances. From time to time after the Closing, Seller will execute and deliver, or cause to be executed and delivered, such documents to Buyer as Buyer shall reasonably request in order to vest more effectively in Buyer good title to the Shares or otherwise consummate more effectively the transactions contemplated by this Agreement, and from time to time after the Closing, Buyer will execute and deliver, or cause to be executed and delivered, such documents to Seller as Seller shall reasonably request in order to consummate more effectively the transactions contemplated by this Agreement.

12.2. Expenses. Each of the parties hereto shall pay the fees and expenses of its respective counsel, accountants and other experts and shall pay all other expenses incurred by it in connection with the negotiation, preparation and execution of this Agreement and the consummation of the transactions contemplated hereby. Seller shall pay all expenses, including, without limitation, all taxes, duties and registration fees, incurred by it or the Companies in connection with the restructuring of the talc business of Seller and its

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Affiliates, including, without limitation, those relating to the creation of Newco.

12.3. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York without reference to choice of law principles, including all matters of construction, validity and performance.

12.4. Notices. All notices, requests, permissions, waivers, and other communications hereunder shall be in writing and shall be deemed to have been duly given if signed by the respective persons giving them (in the case of any corporation the signature shall be by an officer thereof) and delivered by hand, or by United States mail (registered, return receipt requested), properly addressed and postage prepaid:

If to Seller, to:

Cyprus Mines Corporation
9100 Mineral Circle
P.O. Box 3299
Englewood, Colorado 80155

Attention: President

with a copy to:

Cyprus Mines Corporation
9100 Mineral Circle
P.O. Box 3299
Englewood, Colorado 80155

Attention: General Counsel

If to Buyer, to:

RTZ America, Inc.,
150 East 58th Street
New York, New York 10155

Attention: President

with copies to:

Borax Consolidated Limited
Borax House
Carlisle Place
London
SW1P 1HT

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Attention: Mr. F. Alan S. Lesser

RTZ Corporation PLC
6 St. James's Square
London SW1Y 4LD

Attention: Charles H.H. Lawton Esq.

Sullivan & Cromwell
St Olave's House
9a Ironmonger Lane
London EC2V 8EY

Attention: David M. Kies, Esq.

Such names and addresses may be changed by such notice.

12.5. Entire Agreement. This Agreement (including the Schedules attached thereto, all of which are a part hereof) and the Confidentiality Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein, supersedes and cancels all prior agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter.

12.6. Amendments. This Agreement may be amended only by a written instrument executed by the parties or their respective successors or assigns.

12.7. Headings; References. The article, section and paragraph headings and table of contents contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references herein to "Articles", "Sections", or "Schedules" shall be deemed to be references to Articles or Sections hereof and Schedules hereto unless otherwise indicated.

12.8. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart shall be deemed to be an original.

12.9. Parties in Interest; Assignment. This Agreement shall inure to the benefit of and be binding upon Seller and Buyer and their respective successors. Nothing in this Agreement, express or implied, is intended to confer upon any Person not a party to this Agreement any rights or remedies under or by reason of this Agreement. No party to this Agreement may assign or delegate all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other party to this

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Agreement; provided, however, that Seller shall have the right to assign or delegate any portion of its rights, obligations or liabilities hereunder to any Affiliate of Seller, so long as Seller and Cyprus shall remain fully liable for the fulfillment of all of its obligations and liabilities hereunder; and provided, further, that Buyer shall have the right to assign or delegate any or all of its rights, obligations or liabilities hereunder to any Affiliate of Buyer, so long as Buyer shall remain fully liable for the fulfillment of all of its obligations hereunder.

12.10. Severability; Enforcement. The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, each party agrees that a court of competent jurisdiction may enforce such restriction to the maximum extent permitted by law, and each party hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

12.11. Jurisdiction. Buyer, Seller and Cyprus hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, The City of New York, for any actions, suits, or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby (and Buyer, Seller and Cyprus agree not to commence any action, suit or proceeding relating thereto except in such courts), and further agree that service of any process, summons, notice or document by U.S. registered mail to its address set forth above shall be effective service of process of any action, suit or proceeding brought against it in any such court. Buyer, Seller and Cyprus hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in such state or federal courts as aforesaid and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.12. Waiver. Any of the conditions to Closing set forth in this Agreement may be waived at any time prior to or at the Closing hereunder by the party entitled to the benefit thereof. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be waiver of any such provision, nor in any way to affect the validity of this Agreement or any

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part hereof or the right of such party thereafter to enforce each and every such provisions. No waiver of any breach of or non-compliance with this Agreement shall be held to be a waiver of any other or subsequent breach of non-compliance.

12.13. Interest. If any party to this Agreement defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise), the liability of such party shall be increased to include interest on such sum from the date when such payment shall be due until the date of actual payment at a rate per annum (but not in excess of the maximum lawful rate) of three percent above the rate for three-month deposits in the London interbank market in the currency of payment, as announced by Citibank N.A. as of 11:00 A.M., London time, on the date when such payment shall be due.

INTOSERVICES INC

TEL No. 2128882697

Jun 5, 92 17:05 No. 004 P. 05

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IN WITNESS WHEREOF, the parties hereto have duly
executed this Agreement as of the date first above written.

CYPRUS MINES CORPORATION

By

Name:

Title: *SENIOR VICE PRESIDENT*

CYPRUS MINERALS COMPANY

By

Name:

Title: *SENIOR VICE PRESIDENT
AND CHIEF FINANCIAL OFFICER*

RTZ AMERICA INC.

By

Name: *Arthur L Glass*

Title: *President*

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AMENDMENT TO
STOCK PURCHASE AGREEMENT
AMONG
CYPRUS MINES CORPORATION
CYPRUS MINERALS COMPANY
and
RTZ AMERICA INC.
Dated as of June 24, 1992

REDACTED DOCUMENT

AMENDMENT DATED AS OF JUNE ²⁴, 1992, TO STOCK PURCHASE AGREEMENT DATED JUNE 5, 1992, by and among Cyprus Mines Corporation, a Delaware corporation ("Seller"), Cyprus Minerals Company, a Delaware corporation ("Cyprus") and RTZ America Inc., a Delaware corporation ("Buyer").

W I T N E S S E T H:

WHEREAS, on June 5, 1992 the parties entered into a stock Purchase Agreement ("Agreement");

WHEREAS, the parties desire to make certain conforming changes to the Agreement to confirm the intent of the parties;

NOW, THEREFORE, in consideration of the mutual agreements contained herein and in the Agreement, Buyer, Seller and Cyprus hereby agree as follows:

1. The Agreement is hereby amended to insert and delete specified words and phrases as follows:

- a. On page 7, Section 3.1, at the end of the section insert "The Closing shall be effective as of the close of business on the Closing Date.";
- b. On page 8, Section 3.3(c), line 1, insert "or Cyprus" after "Seller";
- c. On page 8, Section 3.3(c), line 9, insert "or Cyprus" after "Seller";
- d. On page 26, Section 5.28, line 2, insert "or Cyprus" after "Seller";
- e. On page 48, Section 10.1(a), line 2, insert "and Cyprus" after "Seller";
- f. On page 49, Section 11.1(a), line 8, insert "third party" after "any";
- g. On page 49, Section 11.1(a), line 12, insert "excluding, however, any such third party claim (x) for which a Buyer Indemnitee would be entitled to indemnification pursuant to Sections 11.1(a)(i), (ii) or (b), in each case disregarding the limitations set forth in Section 11.4, (y) regarding any environmental matter covered in Section 11.3, disregarding the limitations set forth in Section 11.3, or (z) for which Buyer is responsible under Section 7.4" after "Date";

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- h. On page 51, Section 11.3(a), line 6 from end of paragraph, insert "neither Cyprus nor" prior to "Seller" and delete "not" prior to "have";
- i. On page 54, Section 11.6, line 3, insert "as to time" after "limitation";
- j. On page 55, Section 12.4, line 9, insert "or Cyprus" after "Seller"; and
- k. On page 56, Section 12.9, line 3, insert ", Cyprus" after "Seller".

2. Section 11.3(c) of the Agreement is hereby amended to delete the existing Section 11.3(c) and insert in lieu thereof the following:

" 11.3. (c) With respect to the operating sites of the Companies set forth on Schedule 11.3A, Seller and Cyprus' liability for Losses pursuant to Section 11.3(a) shall not include any liability for closure costs or reclamation costs, and collectively shall not in the aggregate exceed an amount equal to the Purchase Price; provided, however, that no claim for any single item may be made under this Section 11.3, unless and until the amount of such claim exceeds [REDACTED] in which case Seller and Cyprus shall be liable for the whole amount of such claim subject to the aggregate limit stated above. With respect to the sites of the Companies not set forth on Schedule 11.3A, Seller and Cyprus' liability for Losses pursuant to Section 11.3(a) shall include all liabilities for closure and reclamation costs, and shall not be limited to any amount; provided, however, that no claim for any single item may be made under this Section 11.3 unless and until the amount of such claim exceeds [REDACTED], in which case Seller and Cyprus shall be liable for the whole amount of such claim; provided, further, however, that if the cost of any Remedial Action on such property is clearly shown, by Seller or Cyprus to the reasonable satisfaction of Buyer, to be in excess of its fair market value, Seller or Cyprus shall instead of taking such Remedial Action have the option to reacquire such property from Buyer for one dollar and shall be solely liable for any costs associated with such property."

3. Section 11.4 of the Agreement is hereby amended to delete the existing Section 11.4 and insert in lieu thereof the following:

" 11.4. Limitations on Indemnifications. The provisions for indemnity under Sections 11.1(a)(i),

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(ii) and (b) and 11.2 shall be effective only when the aggregate amount of all claims for which Seller and Cyprus, on the one hand, or Buyer, on the other hand, is liable under Sections 11.1(a)(i), (ii) and (b) or 11.2, respectively, exceeds [REDACTED], in which case such Indemnifying Party or Parties shall be liable for all such amounts; provided, however, that in no event shall either Buyer, on the one hand, or Seller and Cyprus collectively, on the other hand, be liable for more than an amount in the aggregate equal to [REDACTED] for all claims made against it or them under Sections 11.1(a)(i), (ii) and (b) or 11.2, respectively; provided, further, however, that no claim for any single item may be made, nor shall Seller and Cyprus, on the one hand, nor Buyer, on the other hand, be liable, under Sections 11.1(a)(i), (ii) and (b) or 11.2, respectively, if the amount of such claim is less than [REDACTED] provided, further, however, that no claim may be made for indemnity to the extent the Indemnitee can reasonably, and does actually recover pursuant to an existing business interruption insurance. Notwithstanding other provisions of this Section 11.4, the limitations set forth in this Section 11.4 do not apply to any claims by Buyer Indemnitees against Seller or Cyprus for any liabilities or obligations (including costs and expenses associated therewith) arising out of any litigation or claims listed on Schedule 5.9."

4. Typographical errors in the Agreement are hereby corrected by amendment as follows:

- a. On page 7, Section 3.1, line 5, "7 and 8" is corrected to read "8 and 9";
- b. On page 7, Section 3.1, line 8, "7 and 8" is corrected to read "8 and 9";
- c. On page 7, Section 3.1, line 9, "Section 7.6 and 8.6" is corrected to read "Sections 8.6 and 9.6";
- d. On page 9, Section 3.4, line 6, "(e)" is corrected to read "(d)";
- e. On page 15, lines 4-5, "Material Adverse Effect" is corrected to read "material adverse effect";
- f. On page 34, Subsection (iv), line 5, "Afl-CIO" is corrected to read "AFL-CIO";
- g. On page 35, Subsection (f), line 16, "Sellers" is corrected to read "Seller";

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- h. On page 35, Subsection (h), line 6, "6.4" is corrected to read "7.4";
- i. On page 35, Subsection (h), line 7, "Indemnities" is corrected to read "Indemnitees";
- j. On page 35, Subsection (h), line 10, "6.4" is corrected to read "7.4";
- k. On page 35, Subsection (h), line 11, "6.4" is corrected to read "7.4";
- l. On page 36, line 1, "Indemnities" is corrected to read "Indemnitees";
- m. On page 37, Section 7.5(B)(iv), line 3, "treated or" is corrected to read "treated as";
- n. On page 48, Section 9.7, line 3, "dates" is corrected to read "dated";
- o. On page 49, Section 11.1, line 6, "Indemnities" is corrected to read "Indemnitees";
- p. On page 50, Section 11.2, line 6, "Indemnities" is corrected to read "Indemnitees";
- q. On page 54, line 12, "11.4" is corrected to read "11.5"; and
- r. On page 58, line 4, "breach of" is corrected to read "breach or".

5. The parties hereby recognize, acknowledge and agree to the execution of a conforming amendment of even date to the Agreement of Transfer and Assumption dated June 5, 1992 between Seller and Newco.

REDACTED DOCUMENT

6. This Amendment may be executed in one or more counterparts and each counterpart shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment to the Agreement as of the date first above written.

CYPRUS MINES CORPORATION

By: 

Name: P.C. Wolf
Title: President

CYPRUS MINERALS CORPORATION

By: 

Name: G.J. Malys
Title: Senior Vice President

RTZ AMERICA INC.

By: _____

Name:
Title:

REDACTED DOCUMENT

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CYPRUS MINERALS

P.10/10

6. This Amendment may be executed in one or more counterparts and each counterpart shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment to the Agreement as of the date first above written.

CYPRUS MINES CORPORATION

By: _____
Name:
Title:

CYPRUS MINERALS CORPORATION

By: _____
Name:
Title:

RTS AMERICA INC.

By: Arthur L. Glass
Name: Arthur L. Glass
Title: President